(1)

88-31

Supreme Court, U.S.
FILED
JUN 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1988

Gary Lewis,

Petitioner,

V.

Midwestern State University, ET AL.,

Respondents.

Petition for Writ of Certiorari
to the United States Court of Appeals
for The Fifth Circuit

Barbara C. Crampton
Bar Card No. 05004000
Crampton, Crampton & Estrada
505 Lamar Street
Wichita Falls, Texas 76301
(817) 723-9746

Attorneys for Petitioner

QUESTIONS PRESENTED

I.

Whether a federal statutory cause of action brought under 42 U.S.C. sec. 1983 in state court but subsequently removed to federal court pursuant to 28 U.S.C. sec. 1446(e) may be barred from prosecution by the Eleventh Amendment.

II.

Whether an institution of higher learning, initially created and existed for thirty-nine years as a private institution before becoming a public university and retaining sufficient non-state assets to satisfy a judgment rendered against it, is entitled to Eleventh Amendment immunity from monetary damages.

LIST OF PARTIES

Gary Lewis, petitioner

Midwestern State University,
et al., respondents

TABLE OF CONTENTS

Questions Presented.....i

List of Parties.....ii

Table of Contents.....iii

Table of Authorities.....vi

Reports of Opinions Below.....2

Jurisdictional Statement.....2

Constitutional and

Statutory Provisions.....3

Statement of the Case.....4

1. Material Facts.....4

2. Manner of raising the federal questions.....4

Reasons for Granting Writ.....8

Appendix.....App. 1

Exhibit A----
Opinion of Fifth Circuit....App. 1

Exhibit B----
Order Overruling Motion for Rehearing.....App. 11

Exhibit C----
Order of District Court, September 15, 1986.....App. 13

Exhibit D----
Agreed Stipulation and
Order of Dismissal.....App. 23

Exhibit E----
Agreed Order of Dismissal,
October 1, 1986.....App. 38

Exhibit F----
28 U.S.C. sec. 1254.....App. 42

Exhibit G----
28 U.S.C. sec. 1343.....App. 44

Exhibit H----
28 U.S.C. sec. 1441.....App. 47

Exhibit I----
42 U.S.C. sec. 1983.....App. 50

Exhibit J----
42 U.S.C. sec. 1988.....App. 51

Exhibit K----
Texas Education Code,
Section 51.004.....App. 54

Exhibit L----
Texas Education Code,
Section 61.....App. 56

Exhibit M----
Texas Education Code,
Section 95.01.....App. 204

Exhibit N----
Texas Education Code,
Section 103.....App. 221

Exhibit O----
Article 4411 V.A.T.S.....App. 228

Exhibit P----
Article 6252-9b V.A.T.S...App. 229

TABLE OF AUTHORITIES

CASES Page

Assaf v. University of Texas System,
399 F.Supp. 1245 (S.D. Tx. 1975).....13

Atascadero State Hospital v. Scanlon,
105 S.Ct. 3142 (1985).....App. 19

Clay v. Texas Women's University,
728 F.2d 714 (5th Cir. 1984).....App. 17

Dagnell v. Gegeheimer, 645 F.2d 2
(5th Cir. 1981).....App. 19

Edelman v. Jordan, 415 U.S. 651,
94 S.Ct. 1347, 39 L.Ed.2d 662
(1974).....App. 6, 10, 18

Ex parte Young, 209 U.S. 123,
28 S.Ct. 441 (1908).....App. 18

Gay Student Services v. Texas A & M University, 612 F.2d 160 (5th Cir.
1980).....13

Goss v. San Jacinto Junior College,
588 F.2d 96 (5th Cir.
1979).....14

Henry v. Texas Tech University,
466 F.Supp. 141 (N.D. Tx.1979).....13

Kelleher v. Flawn,
761 F.2d 1079 (5th Cir. 1985).....App. 21

Kovats v. Rutgers,
822 F.2d 1303 (3d Cir. 1987).....7

Mitchell v. Forsyth,
105 S.Ct. 2806 (1985).....App. 20

Pennhurst State School and Hospital v. Halderman, 465 U.S. 89,
104 S.Ct. 900 (1980).....App. 17

United Carolina Bank v.Board of Regents of Stephen F. Austin University, 665 F.2d 553
(5th Cir. 1982).....10, 13, App. 6, 7, 9, 10, 16

CONSTITUTIONAL PROVISIONS

United States Constitution

Eleventh Amendment.....3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, App. 2, 3, 5, 6, 9, 10, 15-21

STATUTES

28 U.S.C. sec. 1254.....3, App. 42

28 U.S.C. sec. 1343.....5, App. 44

28 U.S.C. sec. 1441.....5, App. 47

42 U.S.C. sec. 1983.....4, 5 App. 15, 24, 50, 52

42 U.S.C. sec. 1988.....4, 5

Texas Education Code,
Section 51.004.....App. 10, 54

Texas Education Code,
Section 61.....App. 7, 8, 56

Texas Education Code,
Section 95.....App. 6, 8, 204

Texas Education Code,
Section 103.....App. 8, 221

Vernon's Annotated Texas Statutes
Article 4411.....App. 19, 228

Vernon's Annotated Texas Statutes
Article 6252-9b.....App. 7, 229

No. _____

In The
Supreme Court of the United States

October Term, 1988

GARY LEWIS,

Petitioner,

v.

MIDWESTERN STATE UNIVERSITY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPORTS OF OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is found at 837 F.2d 197 (5th Cir. 1988). (See appendix, Exhibit A).

The Order of the United States Court of Appeals for the Fifth Circuit denying Appellant's motion for rehearing was entered without an opinion. (See appendix, Exhibit B).

JURISDICTIONAL STATEMENTS

1. Judgment sought to be reviewed is the Judgment of the United States Court of Appeals for the Fifth Circuit entered on February 10, 1988, and subsequently filed on March 30, 1988 after a denial of Petitioner's Motion for Rehearing on March 10, 1988.

2. The statutory provision believed to confer jurisdiction on this Court to review the judgment in question by Writ of Certiorari is 28 U.S.C. sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional Provision

United States Constitution

ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

STATEMENT OF THE CASE

Material Facts:

This case is one involving civil rights violations (42 U.S.C. sec. 1983 and 1988) in nature. Petitioner, Gary Lewis, has been a tenured associate professor of music at Midwestern State University since the fall of 1974.

In the fall of 1984, the administration at Midwestern State University began a course of disparate and unpleasant treatment of Petitioner. Included in this treatment were actual threats by the Vice President for Academic Affairs to Petitioner.

There was no internal faculty grievance procedure available at Midwestern State University for Petitioner.

Petitioner filed this suit pursuant to 42 U.S.C. sec. 1983 and 1988 seeking both injunctive and monetary damages. The original petition was filed on March 19, 1985 in the 89th District Court of Wichita County, Texas.

The suit was then removed to federal district court on the petition of Respondents pursuant to 28 U.S.C. sec. 1343 and 1441(c), because Petitioner had a separate and independent claim arising under the laws of the United States, 28 U.S.C. sec. 1983 and 1988, over which the United States District Court had original jurisdiction. Upon removal, Respondents raised the Eleventh Amendment immunity defense which had been unavailable to them in state district court.

Following Respondents filing Motion for Summary Judgment (which the court

subsequently required to be repled) the Petitioner responded and Respondents responded again.

The trial court signed its Order on September 15, 1986 granting Respondents partial summary judgment on the basis of sovereign immunity under the Eleventh Amendment.

Thereafter the remaining issues were settled by the parties and an agreed order of dismissal was entered on October 2, 1986.

The parties agreed that Petitioner would appeal the question of whether Midwestern State University and the individual respondents solely in their representative capacity were entitled to the governmental immunity of the Eleventh Amendment.

A timely notice of appeal was filed on October 2, 1986.

Appeal was perfected to the United States Court of Appeals for the Fifth Circuit on the Record without any statement of facts. The judgment of the District Court was affirmed by the Fifth Circuit on February 10, 1988.

A petition for rehearing was timely filed on the questions:

1. Whether the nine point analysis in *Kovats v. Rutgers*, 822 F.2d 1303 (3d Cir. 1987) is applicable to determine whether the university is an arm of the state for purposes of Eleventh Amendment immunity; and

2. Whether a state university, which was originally a private institution for thirty-nine years, with non-state assets, is only entitled to

partial immunity to the extent that judgment against Midwestern State University could only be satisfied from the non-state assets.

Petitioner's Motion for Rehearing was denied on March 10, 1988 without a hearing.

REASONS FOR GRANTING THE WRIT

1. Petitioner was precluded from having his federal statutory cause of action from being heard in state district court and federal district court.

To determine whether Eleventh Amendment immunity is available to a defendant, a distinction is needed to be made between a federal statutory cause of action brought in state court and a common law cause of action brought in federal court. Petitioner elected to bring his federal statutory claim in state court where the Eleventh Amendment

immunity defense does not apply. Respondents were entitled to have the suit removed to federal court upon meeting procedural requirements. Upon removal, Petitioner's federal claims were precluded to be heard by any state or federal court. With the interaction of the Eleventh Amendment and the federal removal statute, Respondents were able to select the forum and to bar prosecution of Petitioner's federal claims. This defeats the intent of the United States Congress to provide for an injured party a cause of action to seek redress for the violation of his civil rights.

2. There is a conflict among the Third and Fifth Circuits of the United States Court of Appeals on the appropriate test to be applied to determine whether a state university, with attributes of a private university, is an alter ego of the state for purposes of determining Eleventh Amendment immunity.

In its determination that Respondents were entitled to Eleventh Amendment immunity, the Fifth Circuit applied a three point analysis, examining the following factors:

1. The current status of the university under state law and its relationship to state government,

2. The degree of state control over the university, and

3. Whether a money judgment against the university would interfere with the fiscal economy of the state.

As precedence, the Fifth Circuit cited *United Carolina Bank v. Board of Regent of Stephen F. Austin University*, 665 F.2d 553 (5th Cir. 1982), a state university created at its inception by the Texas Legislature.

Petitioner asserted in his Motion for Rehearing that the three point analysis in *United Carolina Bank* is

insufficient to determine whether Midwestern State University is an arm of the state because additional factors besides those used by the Fifth Circuit are relevant to the analysis. Petitioner urged that the Fifth Circuit apply the nine point analysis used by the Third Circuit to determine whether a state university with attributes of its private origins was entitled to Eleventh Amendment immunity. The list of factors that the Third Circuit used were as follows:

1. What is the local law and decisions defining the status and nature of the university in its relation to the state,

2. Whether payment of the judgment will have to be made out of the state treasury in the event Plaintiff prevailed,

3. Whether the university has the funds or the power to satisfy the judgment,

4. Whether the university is performing a governmental or proprietary function,

5. Whether it has been separately incorporated,

6. What is the degree of autonomy over its operations,

7. Whether it has the power to sue and be sued and to enter into contracts,

8. Whether its property is immuned from state taxation, and

9. Whether the state has immunized itself from responsibility for the university's operations.

There are no reported decisions by the federal district courts in Texas nor the Fifth Circuit that have construed whether Midwestern State University is entitled to Eleventh Amendment immunity. Analysis of the institution for purposes of the Eleventh Amendment immunity issue should be considered on an individual basis.

Two classes of institutions of higher learning have been construed. One class is the public universities initially created by the Texas Constitution or by the Texas legislature; i.e., Stephen F. Austin State University, Texas A & M University, Texas Tech University, and the University of Texas System. *United Carolina Bank v. Board of Regent of Stephen F. Austin University*, 665 F.2d 553 (5th Cir. 1982); *Gay Student Services v. Texas A & M University*, 612 F.2d 160 (5th Cir. 1980); *Henry v. Texas Tech Univ.*, 466 F. Supp. 141 (N.D. Tx. 1979); *Assaf v. University of Texas System*, 399 F. Supp. 1245 (S.D. Tx. 1975). These universities are without dispute an arm of the State of Texas and are entitled to share the Eleventh Amendment immunity with the State.

The second class is the municipal junior colleges created by local initiative. Such institutions have been construed to be more like political subdivisions and are not entitled to Eleventh Amendment immunity. *Goss v. San Jacinto Junior College*, 588 F.2d 96 (5th Cir. 1979).

The origin of Midwestern State University is significant because it operated as a private institution for about 39 years before becoming a state university. Thus Midwestern State University is neither an university created at its inception by the Texas Constitution or by the Texas legislature nor is it currently a municipal college. Midwestern State University has attributes of both classes of educational institutions but does not precisely fit

into either class. Yet the Fifth Circuit applied the three-point analysis more applicable to an university created at its inception by the Texas legislature.

When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter, an exercise of this Court's power of supervision is needed.

Respectfully submitted,

Barbara C. Crampton
Bar Card No. 05004000
CRAMPTON, CRAMPTON & ESTRADA
505 Lamar Street
Wichita Falls, Texas 76301
(817) 723-9746

Attorneys for Petitioner

App. 1

EXHIBIT A

GARY LEWIS,

Plaintiff-Appellant,

v.

MIDWESTERN STATE UNIVERSITY, ET AL.,

Defendants-Appellees.

No. 86-1720

United States Court of Appeals,

Fifth Circuit.

February 10, 1988

Rehearing Denied March 10, 1988

Music instructor brought action against state university alleging federal civil rights and state law claims because of university's treatment of him. The United States District Court for the Northern District of Texas, Mary Lou Robinson, J., dismissed claims for damages on basis of sovereign immunity,

and instructor appealed. The Court of Appeals, Thornberry, Circuit Judge, held that state university was protected from award of damages by sovereign immunity under Eleventh Amendment, even though it received private donations and revenues from commercial operations, where university was subject to state control and received funds from state government.

Affirmed.

Holly Crampton, Wichita Falls, Tex., for plaintiff-appellant.

Esther Hajdar, Asst. Atty. Gen., Jim Mattox, Atty. Gen., Leslie L. McCollom, Asst. Atty. Gen., Austin, Tex., Roger Anson Lee, Wichita Falls, Tex., for defendants-appellees.

Appealed from the United States District Court for the Northern District of Texas.

Before THORNBERRY, POLITZ, and JOLLY, Circuit Judges.

OPINION

THORNBERRY, Circuit Judge:

Gary Lewis brought this action against Midwestern State University, its Board of Regents, and two university officials, alleging federal civil rights and state law claims because of the university's treatment of him. The district court dismissed Lewis' claims for damages on the basis of sovereign immunity under the Eleventh Amendment. We affirm.

Lewis filed this action originally in Texas state court. The defendants removed to federal district court. Lewis' complaint alleged that he was denied the right to teach one-on-one applied piano lessons, and instead was

assigned to teach classroom piano and music appreciation. Lewis viewed the reassignment as part of a campaign by university officials to damage his reputation and force him to resign. He asserted that these actions deprived him of property and liberty without due process.

The district court granted partial summary judgment to the defendants, holding that Lewis' claim for damages was barred by sovereign immunity. To secure immediate review of the sovereign immunity issue, Lewis agreed to the dismissal of all claims except the one for damages against the university. On the basis of a stipulation and agreed

order, the district court entered final judgment.[1]

The district court decided the sovereign immunity issue on summary judgment. For summary judgment to be proper, there can be no genuine issue of material fact, and the defendants must be entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).

---

[1] Initially, we have some doubt that Lewis' allegation made out a viable claim for damages under federal law. Nevertheless, we hesitate to dismiss Lewis' appeal on the ground. The district court never ruled on the merits of this case; indeed, the time for discovery had not yet expired when the court granted partial summary judgment to the defendants on the basis of sovereign immunity. Thus, this case is unlike *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 106 S.Ct. 507, 522 n. 6, 88 L.Ed.2d 523 (1985) (declining to consider the Eleventh Amendment issue when the facts presented no substantive due process claim). In Ewing, the district court had conducted a bench trial and had ruled on the merits of the due process claim.

Only the state government and "arms of the state" qualify for sovereign immunity under the Eleventh Amendment. The Amendment does not ordinarily apply to municipal corporations and other political subdivisions of the state. *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 1358 & n. 12, 39 L.Ed.2d 662 (1974). Public universities may qualify for immunity or not depending on their status under state law and their relationship to state government.

In *United Carolina Bank v. Board of Regents*, 665 F.2d 553 (5th Cir. Unit A 1982), we formulated a detailed analysis for resolving the status of public universities. That analysis focused on the status of the university under state law, the degree of state control over the university, and whether a money judgment

against the university would, because of the status of the university's funds, interfere with the fiscal autonomy of the state. Id. at 557-61. Applying those factors, we concluded in *United Carolina Bank* that Stephen F. Austin University was an arm of the state and therefore entitled to immunity.

Midwestern State University shares many of the characteristics of Stephen F. Austin University, as found by the court in *United Carolina Bank*. First, the university is classified as a "general academic teaching institution" under Texas law, and is therefore an agency of the state. Tex.Educ.Code Ann. sec. 61.003(3); Tex.Rev.Civ.Stat.Ann. art. 6252-9b, sec. 2(8)(B). In addition, although the university was not originally created by state law, since

1961 it had been subject to Tex.Educ.Code Ann. sections 95 and 103. These statutes authorize the operation of the university and provide for its governance. In particular, under section 103.03 the university's Board of Regents is appointed by the governor and confirmed by the Texas senate. Also, under section 61 the university is subject to oversight by the Coordinating Board, Texas College and University System. These characteristics argue strongly that, like Stephen F. Austin University, Midwestern State University is an arm of the state and entitled to immunity.

The focus of Lewis' argument is the university's ownership of funds other than those appropriated by the state university, it received private donations and municipal taxes that it used to buy

land and construct buildings. The university currently receives not only private donations but revenues from its commercial operations such as the bookstore and the cafeteria. Because a judgment could be satisfied out of these "non-state" funds, Lewis claims, the university is not entitled to sovereign immunity.

We rejected a similar argument in *United Carolina Bank*. That case held that "the eleventh amendment is not applicable only where payment would be directly out of the state treasury." 665 F.2d at 560. Instead, the "crucial question ... is whether use of these unappropriated funds to pay a damage award ... would interfere with the fiscal economy and political sovereignty of Texas." Id. at 560-61. In answering that

question, our reasoning in *United Carolina Bank* is exactly on point here: "These local funds, collected under authority of state law, Tex.Educ.Code Ann. sec. 51.004, are either held in the Treasury or restricted as to use. In either event they are subject to audit and budget planning. Thus any award from those funds would directly interfere with the state's fiscal autonomy." Id. at 561."

The district court correctly held that Midwestern State University is protected from an award of damages by sovereign immunity under the Eleventh Amendment. The judgment is

AFFIRMED.

App. 11

Exhibit B

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 86-1720

GARY LEWIS,

Plaintiff-Appellant,

versus

MIDWESTERN STATE UNIVERSITY
ET AL.,

Defendants-Appellees.

Appeal from the United States District
Court for the
Northern District of Texas

ON PETITION FOR REHEARING

March 10, 1988

Before THORNBERRY, POLITZ and JOLLY,

Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
United States Circuit Judge

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

WICHITA FALLS DISTRICT

GARY LEWIS,	*	
Plaintiff,	*	
vs.	*	CIVIL ACTION NO. CA-7-85-40
MIDWESTERN STATE UNIVERSITY, ET AL.,	*	
Defendants.	*	

ORDER

Plaintiff, Gary Lewis, is a tenured faculty member at Midwestern State University. Defendants are Midwestern State University, the Board of Regents of Midwestern State University, Dr. Louis J. Rodriguez, President of Midwestern State University, and Dr. Jesse W. Rogers, both

in his capacity as Vice-President of Academic Affairs, and individually. Plaintiff Lewis alleges, inter alia, that in August 1984, he was reassigned to teach class piano and music appreciation and was denied the right to teach applied piano (one on one instruction). He contends that he was thus deprived of a vested property right without due process of law and equal protection under the 5th and 14th Amendments of the United States Constitution, and Article 1, Section 19 and Article 1, Section 3 of the Texas Constitution. He also alleges that he is being harassed and coerced in an attempt to secure his resignation. He seeks a court order requiring Midwestern State University, the Board of Regents, and Dr. Louis J. Rodriguez to establish internal grievance procedures for tenured faculty.

He seeks injunctive and monetary relief under 42 U.S.C. 1983 and 42 U.S.C. 1988 against Midwestern State University and Dr. Jesse W. Rogers. Before the Court is Defendants' Motion for Summary Judgment.

By their motion for summary judgment Defendants contend that Midwestern State University is an arm of the State of Texas and that it and the other defendants sued in their official capacities are entitled to dismissal of all claims for damages pursuant to the 11th Amendment to the Constitution of the United States. They deny that Plaintiff has suffered a deprivation of property or liberty flowing from a policy or custom of Midwestern State University or that he is otherwise entitled to injunctive relief under federal law. Dr. Jesse W. Rogers, the only defendant sued in his

personal capacity, asserts that he is entitled to qualified immunity under the holding of Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).

DISCUSSION

Eleventh Amendment Immunity

The standard for determing(sic) whether a state university has eleventh amendment immunity is set out in *United Carolina Bank v. Board of Regents of Stephen F. Austin State University*, 665 F.2d 553 (5th Cir. 1982). Midwestern State University falls clearly within the scope of that analysis and the Court concludes after an examination of the relevant Texas statutes and the undisputed evidence that Midwestern State University is an arm of the state protected by the eleventh amendment from

being sued in federal court by a Texas citizen.

In *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 104 S.Ct. 900 (1980), the Supreme Court held that "a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief" but noted that "a suit challenging the constitutionality of a state official's action is not one against the state." Id. at 102, 104 S.Ct. at 909. See also *Clay v. Texas Women's University*, 728 F.2d 714, 715-716 (5th Cir. 1984).

Thus, while Midwestern University and its Board of Regents are an arm of the state and the eleventh amendment bars relief against them in federal court, Plaintiff's claim for prospective

injunctive relief from the state officials (Dr. Louis J. Rodriguez and Dr. Jesse W. Rogers) is not barred by the eleventh amendment. *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441 (1908). Nor is any monetary relief which is merely ancillary to such injunctive relief barred. *Edelman v. Jordan*, 415 U.S. 651, 667-668, 94 S.Ct. 1347, 1358 (1974).

Waiver of Eleventh Amendment Immunity

Plaintiff claims that Defendants have waived any claim of eleventh amendment immunity by removing the case to federal court.

A waiver of eleventh amendment immunity must be clear and will only be found where the waiver is express or the inference of waiver is overwhelming. *Edelman v. Jordan*, 415 U.S. 651, 673 (1974). The test to determine if a state

has waived its immunity from federal jurisdiction is a strict one. *Atascadero State Hospital v. Scanlon*, 105 S.Ct. 3142, 3147 (1985). In an analogous case involving the authority of attorneys for the State of Louisiana, the Fifth Circuit held that attorneys for the state did not have clearly expressed authority to waive the eleventh amendment right of the state not to be sued in federal court by a citizen. *Dagnell v. Gegenheimer*, 645 F.2d 2 (5th Cir. 1981). Texas statutory law expressly provides that "no admission, agreement or waiver, made by the Attorney General, in any action or suit in which the state is a party, shall prejudice the rights of the state." Tex. Rev. Civ. Stat. Ann. art. 4411 (Vernon 1976).

The Court concludes that the eleventh amendment immunity of Midwestern State University and its Board of Regents, as an arm of the State of Texas, has not been waived.

Qualified Immunity

Dr. Jesse W. Rogers is sued in his individual capacity. He contends that he is entitled to qualified immunity. The threshhold(sic) issue of the question of qualified immunity is whether the legal norms plaintiff alleges Dr. Rogers violated were clearly established at the time of the action. The question of immunity is separate from the merits of the alleged actions. *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2817 (1985). The law is not clearly established concerning the due process rights of a tenured professor for actions taken by

the University short of discharge. Indeed, it has been held that generally there is no property right in being assigned to teach certain classes. *Kelleher v. Flawn*, 761 F.2d 1079 (5th Cir. 1985). Defendant Dr. Jesse W. Rogers is entitled to qualified immunity for the claims against him in his individual capacity.

CONCLUSION

Defendants' motion for summary judgment is granted in part. Eleventh Amendment Immunity bars Plaintiff's action against Midwestern State University and its Board of Regents. Dr. Jesse W. Rogers is entitled to qualified immunity and to summary judgment on the claims against him in his individual capacity. Except to the extent granted

by this Order the motion for summary judgment is denied.

This Order was announced in open court in the presence of the parties' counsel on September 8, 1986. It is here now reduced to writing.

It is so ORDERED.

ENTERED this 15th day of September, 1986.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
United States District Judge

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

WICHITA FALLS DIVISION

GARY LEWIS,	*	
Plaintiff,	*	
vs.	*	CIVIL ACTION NO. CA-7-85-40
MIDWESTERN STATE UNIVERSITY ET AL	*	
Defendants.	*	

AGREED STIPULATION
AND ORDER OF DISMISSAL

Parties hereto, Plaintiff, Gary Lewis, and Defendants, Dr. Louis Rodriguez, in his official capacity of President of Midwestern State University, and Dr. Jesse Rogers, in his official capacity as Vice-President for Academic Affairs of Midwestern State University,

by and through their attorneys of record, do hereby stipulate and agree to the entry by the Court of these agreed stipulations and order of dismissal with prejudice of all remaining and pending issues, facts, claims and causes of action, alleged in Plaintiff's Original Petition under 42 USC Sections 1983 and 1988, as well as any other issues, facts, claims, and causes of action which Plaintiff might have alleged herein by amendment of his original complaint, including his claim for constructive discharge, EXCEPT as provided for below, which issues, facts, claims or causes of action were not previously determined by the Court's order granting partial summary judgment, signed and entered on September 15, 1986.

The parties hereto stipulate and agree that Midwestern State University has adopted a new internal faculty grievance procedure, the written provisions of which are attached hereto as Exhibit "A", and further stipulate and agree that the Plaintiff, Gary Lewis, is entitled to the benefits of this new faculty grievance procedure, as reflected in Exhibit "A".

The parties hereto stipulate and agree that as to any alleged continuing violation of Plaintiff's due process rights, the adoption by the University of the grievance policy set forth in Exhibit "A", renders such issues moot, and that the procedure reflected in Exhibit "A" is Plaintiff's exclusive and adequate remedy at law, under *Green v. Manser*, 474 U.S.

___, 106 S.Ct. ___, 88 L.Ed.2d 371 (1985) (54 U.S. Law Week 4011).

Parties hereto stipulate and agree that Plaintiff's right to appeal shall be limited to the issues arising from the Court's rulings on the issues of whether Midwestern State University, and officers and officials thereof in their official capacities, are arms and/or instrumentalities of the State of Texas for purpose of sovereign immunity from suit in federal court.

Parties hereto agree and stipulate that Plaintiff will not appeal the Court's order of September 15, 1986 granting qualified immunity to Dr. Rogers in his individual capacity.

Nothing in this agreement shall be construed to bar a claim for constructive discharge or any other basis for a cause

of action that may be founded upon acts, errors, omisions(sic) or other conduct arising after the date of this agreement.

Further, the parties agree that the facts of this case which give rise to claims for injunctive relief have been settled by this agreement; and Plaintiff shall be forever barred from re-opening such facts or issues EXCEPT as the same may arise also under the issues of damages to be determined as a result of the appeal provided for herein.

JIM MATTOX
Attorney General

MARY F. KELLER
Executive Assistant

J. PATRICK WISEMAN
Chief, State & County Affairs

/s/ Leslie L. McCollom
LESLIE L. McCOLLOM
Assistant Attorney General
State & County Affairs
Texas State Bar No. 13431975
P.O. Box 12548, Capitol Stat.

Austin, Texas 78711
(512) 463-2120
Attorney for Defendants

/s/ Roger Lee
Roger Lee
Texas State Bar No. 12135000
Gibson & Hotchkiss
Suite 912 City National Bldg.
Wichita Falls, Texas 76301
(817) 322-7856
Attorney for Defendants

/s/ Holly Crampton
Holly Crampton
Texas State Bar No. 05004500
Crampton, Crampton & Estrada
505 Lamar
Wichita Falls, Texas 76301
(817) 723-9746
Attorney for Plaintiff

(Exhibit A)

Board Minutes
May 9, 1986
Attachment No. 4

FACULTY GRIEVANCE PROCEDURE

Purpose

The following procedures are intended to provide a process for resolving faculty grievances in a prompt and equitable

manner without prejudice, discrimination, or malice toward the person or persons initiating the complaint. Fundamental to the process is the principle that all parties make a good-faith effort to resolve the grievance at the lowest possible administrative level.

Definitions

For the purposes of these procedures, a faculty member is any benefit eligible employee of the University who is assigned teaching responsibilities. However, a faculty member who is also assigned administrative duties may not use these procedures to resolve disputes with the administration arising out of his administrative functions.

Except as specifically noted below, a grievance is a disagreement between

faculty members or between a faculty member and the administration concerning either of the following:

1) a faculty member's fulfillment of contractual obligations and/or professional responsibilities

2) an alleged infringement of a faculty member's professional rights including the inequitable application of any MSU policy or procedure.

Specifically excluded from these procedures are disagreements arising from notice of termination and from decisions concerning promotion and tenure taken by the Vice President of Academic Affairs and/or the President of MSU.

Initial Procedures

1. If a faculty member or program coordinator believes that the other is not fulfilling contractual obligations or professional responsibilities, the person making the allegation may request a

conference with the other party. If no agreement is reached, either party may request a conference with the division director.

2. If a faculty member believes that his professional rights have been infringed upon, he may request a conference with his program coordinator. If no agreement is reached, either party may request a conference with the division director.

3. If a faculty member concludes that there has been a breach of professional responsibility or contractual obligations by another faculty member, he may request a conference with the other faculty member and the appropriate program coordinator and/or division director.

4. If, in the situations outlined above, agreement cannot be reached at or below

the divisional level, then the division director, program coordinator, or faculty member may request the assistance of the Vice President for Academic Affairs.

5. If the issue cannot be resolved at this level, then the faculty member may request that a panel of the Faculty Grievance Committee hear his complaint. The faculty member must submit his request in writing to the chairman of the Faculty Senate, and the request must include:

1) a brief description of the grievance, including the name of the other principal party

2) a brief account of the steps taken to resolve the grievance

Faculty Grievance Committee and Hearing Panel

The Faculty Grievance Committee is a standing committee consisting of nine

full-time faculty members elected for a period of two years, one from each division of the University.

Upon receipt of a request for a hearing, the chairman of the Faculty Senate shall convene the Faculty Grievance Committee within five working days. The chairman of the Faculty Senate shall meet with the committee, and the committee shall first determine whether the initial procedures of this policy have been followed. If so, the committee shall then, under the supervision of the chairman of the Faculty Senate, choose by a lot five of its members to form a Hearing panel. The chairman of the Faculty Senate shall inform each party in writing of those chosen to hear the grievance.

Once notified of the panel's membership, each party shall have five working days in which to exclude, without showing cause, one member of the panel. Such exclusion must be made in writing to the chairman of the Faculty Senate, who will select another member of the Grievance Committee by lot to fill any vacancy thus created.

Within five working days of the panel's final selection, its members shall meet and elect one of their members to chair the hearing. The panel shall also establish a time, day, and place of the hearing at least ten but no more than fifteen working days hence.

Grievance Hearing

The chair of the Hearing Panel shall inform both parties in writing of the

time, day, and place of hearing at least ten working days prior to the hearing.

Both parties shall submit written statements to the Hearing Panel, and each party and panel member shall receive copies of all documents received by the panel at least two working days prior to the hearing.

The hearing shall be informal. The hearing shall, however, be closed, and witnesses for either side shall be present only while testifying. All present, for whatever length of time, shall consider the proceedings and deliberations to be confidential, both during and after the hearing. Confidential minutes of the proceedings will be prepared by the chair-person of

the Committee for final disposition in the President's Office only.

Each party to the disagreement may select one person to appear with him and offer support and advice. Each party shall have the right to present documentation, to call witnesses, and to question witnesses including witnesses for the other side.

Upon completion of the hearing, the chair of the Hearing Panel shall, within ten working days, submit a written report of the panel's findings and recommendations to both parties and to their President of the University. Each member of the panel shall sign the report and indicate individual agreement or disagreement with it.

Acceptance of the Hearing Panel's Report

If the President of the University accepts the panel's report, the panel's decisions become final, and the President is charged with overseeing the implementation of any and all recommendations contained in the report.

If the President does not accept the panel's report, he shall within five working days, inform both parties in writing of his objections to the report and of his final decision in the case.

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

WICHITA FALLS DISTRICT

GARY LEWIS,	*	
Plaintiff,	*	
vs.	*	CIVIL ACTION NO. CA-7-85-40
MIDWESTERN STATE UNIVERSITY, ET AL.,	*	
Defendants.	*	

AGREED ORDER OF DISMISSAL

On this day the parties presented their Agreed Stipulation and Order of Dismissal to the Court and the Court, having examined the Agreed Stipulation and Order of Dismissal, which document has been filed or record in this cause and the terms of which are fully

incorporated herein, the Court makes the following orders:

IT IS ORDERED, ADJUDGED AND DECREED that this suit is dismissed with prejudice as to Plaintiff's claims for injunctive relief.

The Court further finds that the balance of this suit (except for Plaintiff's claims for injunctive relief) was dismissed in the Court's Order (granting partial summary judgment), which order was entered by the Court on September, 15, 1986.

The Court finds that all remaining issues of this case have been dismissed by the combination of this order and the Order (Granting Partial Summary Judgment) entered September 15, 1986.

Costs of court are awarded against the party by whom incurred.

SIGNED this 1st day of October, 1986.

/s/ Mary Lou Robinson
MARY LOU ROBINSON,
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

JIM MATTOX
Attorney General

MARY F. KELLER
Executive Assistant

J. PATRICK WISEMAN
Chief. State & County Affairs

/s/ Leslie L. McCollom
LESLIE L. McCOLLOM
Assistant Attorney General
State & County Affairs
Texas State Bar No. 13431975
P.O. Box 12548, Capitol STat.
Austin, Texas 78711
(512) 463-2120
Attorney for Defendants

/s/ Roger Lee
Roger Lee
Texas State Bar No. 12135000
Gibson & Hotchkiss
Suite 912 City National Bldg.
Wichita Falls, Texas 76301
(817) 322-7856
Attorney for Defendants

/s/ Holly Crampton
Holly Crampton
Texas State Bar No. 05004500
Crampton, Crampton & Estrada
505 Lamar
Wichita Falls, Texas 76301
(817) 723-9746
Attorney for Plaintiff

EXHIBIT F

28 U.S.C. sec. 1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any questions of

law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

EXHIBIT G

28 U.S.C. sec. 1343

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege or a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42 (42 USCS sec. 1985);

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section --

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia.

EXHIBIT H

28 U.S.C. sec. 1441

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of

the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing

the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

EXHIBIT I

42 U.S.C. sec. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

EXHIBIT J

42 U.S.C. sec. 1988

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having juris-

diction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision or sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes (42 USCS sec. 1981-1983, 1985, 1986), title IX of Public Law 92-318 (20 USCS sec. 1681 et seq.), or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code (26 USCS sec. 1 et seq.), or title VI of

the Civil Rights Act of 1964 (42 USCS sec. 2000d et seq.), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

EXHIBIT K

TEXAS EDUCATION CODE.

Section 51.004. Separate Accounts; Trust Funds; Interest

(a) Separate accounts shall be kept on the books of the institution showing the sources of all sums collected and the purposes for which disbursements are made.

(b) All trust funds, including gifts, grants, and bequests received, establishing or adding to endowment funds, loan and scholarship funds, and funds for other current restricted purposes, shall be credited to separate accounts and shall not be commingled with the general income from student fees or other institutional income.

(c) If the governing board so elects, deposits of all funds not

specifically required to be deposited to special accounts may be deposited in a single bank account if the records of the institution clearly reflect the balances attributable to general funds and various categories of trust funds.

(d) Interest received from depository banks for funds on deposit may be credited to an appropriate account in either general funds or trust funds in relation to the sources of temporary investments in time deposits, if the disposition of the earnings was not specified by the grantor. Interest received from the trust funds time deposits shall be available for loans, scholarships, fellowships, institutional research, faculty aid, and other lawful purposes.

EXHIBIT L

TEXAS EDUCATION CODE.

Section 61. Texas Higher Education Coordinating Board

SUBCHAPTER A. GENERAL PROVISIONS

Section 61.001. Short Title

This chapter may be cited as the Higher Education Coordinating Act of 1965.

Section 61.002. Purpose

The purpose of this chapter is to establish in the field of public higher education in the STate of Texas an agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration

of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

Section 61.003. Definitions

In this chapter:

(1) "Board" means the Texas Higher Education Coordinating Board.

(2) "Public junior college" means any junior college certified by the board in accordance with Section 61.063 of this chapter.

(3) "General academic teaching institution" means The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A & M University, Main University; The University of Texas at

Arlington; Tarleton State College; Prairie View Agricultural and Mechanical College; Texas Maritime Academy; Texas Tech University; University of North Texas; Lamar University; Texas A & I University; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; Pan American University; East Texas State University; West Texas State University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; Tyler State College; and any other college, university, or institution so classified as provided in this chapter or created and so classified, expressly or impliedly, by law.

(4) "Public senior college or university" means a general academic teaching institution as defined above.

(5) "Medical and dental unit" means The University of Texas Medical Branch at Galveston; Southwestern Medical School; The University of Texas Medical School at San Antonio; The University of Texas Dental Branch at Houston; The University of Texas M.D. Anderson Hospital and Tumor Institute at Houston; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The University of Texas Medical School at Houston; the component institutions of The University of Texas Nursing School (System-wide); and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter.

(6) "Other agency of higher education" means The University of Texas System, System Administration; Texas Western University Museum; Texas A & M University System, Administrative and General Offices; Texas Agricultural Experiment Station; Texas Agricultural Extension Service; Rodent and Predatory Animal Control Service (a part of the Texas Agricultural Extension Service); Texas Engineering Experiment Station (including the Texas Transportation Institute); Texas Engineering Extension Service; Texas Forest Service; Texas Tech University Museum; Texas State University System, System Administration; Sam Houston Memorial Museum; Panhandle-Plains Historical Museum; Cotton Research Committee of Texas; Water Resources Institute of Texas; Texas Veterinary

Medical Diagnostic Laboratory; and any other unit, division, institution, or agency which shall be so designated by statute or which may be established to operate as a component part of any public senior college or university, or which may be so classified as provided in this chapter.

(7) "Public technical institute" means the Texas State Technical Institute on the four campuses in McLennan, Cameron, Potter, and Nolan counties.

(8) "Institution of higher education" means any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in this section.

(9) "Governing board" means the body charged with policy direction of any

public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education, including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards insofar as they are charged with policy direction of a public junior college.

(10) "University system" means the association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

(11) "Degree program" means any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle him to a degree

from a public senior college or university or a medical or dental unit.

(12) "Certificate program" means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle him to a certificate, associate degree from a technical institute or junior college, or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level.

(13) "Recognized accrediting agency" means the Southern Association of Colleges and Schools and any other association or organization so designated by the board.

(14) "Educational and general buildings and facilities" means buildings and facilities essential to or commonly associated with teaching, research, or

the preservation of knowledge. Excluded are auxiliary enterprise buildings and facilities, including but not limited to dormitories, cafeterias, student union buildings, stadiums, and alumni centers.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section 61.021. Establishment of Coordinating Board: Functions

(a) The Texas Higher Education Coordinating Board is an agency of the State. It shall have its office in Austin. It shall perform only the functions which are enumerated in this chapter and which the legislature may assign to it. Functions vested in the governing boards of the respective institutions of higher education not specifically delegated to the coordinating board shall be performed by the

governing boards. The coordinating functions and other duties delegated to the board in this chapter shall apply to all public institutions of higher education.

(b) References in this code or other law to the "coordinating board" or the "Coordinating Board, Texas College and University System, are references to the Texas Higher Education Coordinating Board.

Section 61.0211. Application of Sunset Act

The Texas Higher Education Coordinating Board is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board is abolished and this chapter expires September 1, 1989.

Section 61.022. Members of Board: Appointment; Terms of Office

The board shall consist of 18 members appointed by the governor so as to provide representation from all areas of the state with the advice and consent of the senate, and as the constitution provides. Of the initial appointments to the board six shall be for terms which shall expire August 31, 1967, six for terms which shall expire August 31, 1969, and six for terms which shall expire August 31, 1971, or at such time as their successors are appointed and have qualified. Thereafter, the governor shall appoint members for terms of six years. Members of the Texas Commission on Higher Education are eligible for appointment to the board. No member may be employed professionally for remuneration in the

field of education during his term of office.

Section 61.0221. Duty in Making or Confirming Appointments

In making or confirming appointments to the coordinating board, the governor and senate shall ensure that the appointee has the background and experience suitable for performing the statutory responsibility of a member of the coordinating board.

Section 61.023. Board Officers

The governor shall designate a chairman and vice chairman of the board. The board shall appoint a secretary of the board whose duties may be prescribed by law and by the board.

Section 61.024. Compensation and expenses of Members

Members of the board shall serve without pay but shall be reimbursed for their actual expenses incurred in attending meetings of the board or in attending to other work of the board when that other work is approved by the chairman of the board.

Section 61.025. Quorum; Meetings; Agenda

A majority of the membership of the board constitutes a quorum. The board shall hold regular quarterly meetings in the city of Austin, and other meetings at places and times scheduled by it in formal sessions and called by the chairman. An agenda for the meetings in sufficient detail to indicate the items on which final action is contemplated shall be mailed to the chairman of each

governing board and to the chief administrative officer of each state institution of higher education at least 30 days to the meeting.

Section 61.026. Committees and Advisory Committees

The chairman may appoint committees from the board's membership as he or the board may find necessary from time to time. The board may appoint advisory committees from outside its membership as it may deem necessary.

Section 61.027. Rules of Procedure; Hearings; Notice; Minutes

The board shall adopt and publish rules and regulations in accordance with and under the conditions applied to other agencies by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to

effectuate the provisions of this chapter. The board shall grant any institution of higher eduction a hearing upon request and after reasonable notice. Minutes of all meetings shall be available in the board's office for public inspection.

Section 61.028. Commissioner of Higher Education; Personnel; Consultants

The board shall appoint a commissioner of higher education, who shall select and supervise the board's staff and perform other duties delegated to him by the board. The commissioner shall serve at the pleasure of the board. The commissioner shall be a person of high professional qualifications having a thorough background by training and experience in the fields of higher

education and administration and shall possess such other qualifications as the board may prescribe. The commissioner shall employed professional and clerical personnel and consultants as necessary to assist the board and the commissioner in performing the duties assigned by this chapter. The number of employees, their compensation and the other expenditures of the board shall be within the limits and in compliance with the appropriation made for those purposes by the legislature and within budgets that shall be approved from time to time by the board.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Section 61.051. Coordination of Institutions of Public Higher Education

(a) The board shall represent the highest authority in the state in matters of public higher education. The board shall develop a five-year plan for higher education in this state and update the plan annually. The five-year plan shall take into account the resources of private institutions of higher education in this state. The board shall inform the legislature on matters pertaining to higher education and shall report to the legislature in January of each year on the state of higher education in Texas.

(b) The board shall define a technical institute, a junior college, a senior college, a university, and a university system; provided, that nothing in this section may be construed to authorize the board to establish or create any technical institute system or

university system or to alter any technical institute system or university system presently existing by virtue of statute or the constitution of this state.

(c) The board shall develop and publish criteria to be used as a basis for determining the need for changing the classification of any public institution of higher education and for determining the need for new public technical institutes, public junior colleges, public senior colleges, universities, or university systems.

(d) The board shall classify and prescribe the role and scope for each public institution of higher education in Texas, shall make such changes in classification or role and scope of each institution as it deems necessary, and

shall hear applications from the institutions for changes in classifications or role and scope. The board, after direct consultation with the governing board of the institution and after providing the forum for a public hearing, may prescribe by rule maximum enrollment limits for such institution. In setting maximum enrollment limits, the board shall take into account any financial hardship such enrollment limits might cause qualified Texas residents seeking a higher education. The governing board of each institution shall determine the maximum enrollment limits for any department, school, degree program, or certificate program at the institution.

(e) The board shall review periodically all degree and certificate programs

offered by the public institutions of higher education to assure that they meet the present and future needs of the state. The board shall also order the initiation, consolidation, or elimination of degree or certificate programs where that action is in the best interest of the public institutions themselves or the general requirements of the State of Texas, or when that action offers hope of achieving excellence by a concentration of available resources. No new department, school, degree program, or certificate program may be added at any public institution of higher education except with specific prior approval of the board. Once approved, no department, school, degree program, or certificate program at any public institution of higher education may be expanded to

include subject matter courses that are outside of approved degree and certificate programs except with prior approval of the board. The board may authorize an institution to continue a doctoral program that is inconsistent with the role and mission of the institution if the program was in existence on September 1, 1987, and the board determines that continuation of the program is warranted.

(f) The board shall encourage and develop new certificate programs in technical and vocational education in Texas public technical institutes and public community colleges as the needs of technology and industry may demand and shall recommend the elimination of such programs for which a need no longer exists. The board shall assume the

leadership role and administrative responsibilities for state level administration of postsecondary technical-vocational education programs in Texas public colleges, public technical institutes, and other eligible public postsecondary institutions.

(g) The board shall develop and promulgate a basic core of general academic courses which, when offered at a junior college during the first two years of collegiate study, shall be freely transferable among all public institutions of higher education in Texas which are members of recognized accrediting agencies on the same basis as if the work had been taken at the receiving institution. The board shall develop and implement policies to provide for the free transferability of lower division

course credit among institutions of higher education.

(h) The board shall make continuing studies of the needs of the state for research and for extension and public services and designate the institutions of higher education to perform research, public service, and extension programs, including limitation of extension programs for credit to specific geographic areas. The board shall also maintain an inventory of all institutional and programmatic research, extension, and public service activities being conducted by the various institutions, whether state-financed or not. Once a year, on dates prescribed by the board, each institution of higher education shall report to the board all research conducted at that institution

during the last preceding year. All reports required by this subsection shall be made subject to the limitations imposed by security regulations governing defense contracts for research.

(i) The board shall develop and promote one or more degree or certificate programs to the highest attainable quality at each public institution of higher education for which the particular institution is uniquely suited and for which there is marked promise of excellence.

(j) No off-campus courses for credit may be offered by any public technical institute, public community college, or public college or university without specific prior approval of the board. The board shall establish regulations for the coordination of credit and noncredit

activities of adult and continuing education by public technical institutes, public community colleges, or public college and universities.

(k) The board shall establish and maintain a management information system that includes the presentation of uniform statistical information that is appropriate to planning, financing, and decision-making rather than regulation.

(l) The board shall advise and offer technical assistance on the request of any institution or system administration.

(m) The board shall publish and distribute materials on admission policies, transferable courses among institutions, financial assistance programs, and other matters of interest to persons choosing an institution in

which to enroll. It is the intent of the legislature that materials distributed under this subsection be designed to promote and encourage students to complete high school coursework and aspire to their highest potential by obtaining a degree from an institution of higher education.

(n) The board shall develop guidelines for institutional reporting of student performance.

(o) The board shall encourage cooperative programs and agreements among institutions of higher education, including, among others, programs and agreements relating to degree offerings, research activities, and library and computer sharing.

(p) The board shall administer trusted funds, grant programs, research

competition awards, and other funds and programs as directed by the legislature.

(q) The board shall develop a statewide telecommunications network among institutions of higher education for integrated teaching and data transmission and computation, but only to the extent that the telecommunications services are not available through a system of telecommunications services established for state agencies generally.

(r) The board shall conduct a review of all doctoral programs offered at institutions of higher education. The review shall consider:

(1) program quality;

(2) demand for the degree program;

(3) number of graduates;

(4) geographic distribution of doctoral degree programs;

(5) employment opportunities and demand for degree holders; and

(6) duplication with other programs.

The board shall begin the review by considering first the institutions that offer a single doctoral program. The review must be completed by December 1992. The board shall report the results of the review regarding public institutions of higher education to the legislature not later than the convening of the regular legislative session in 1993.

Section 61.052. List of Courses: Annual Submission to Board

Each governing board shall submit to the board once each year on dates designated by the board a comprehensive list by department, division, and school

of all courses, together with a description of content, scope, and prerequisites of all these courses, that will be offered by each institution under the supervision of that governing board during the following academic year. The board may order the deletion or consolation of any courses so submitted after giving due notice with reasons for that action and after providing a hearing if one is requested by the governing board involved.

Section 61.053. Board Orders; Notice

(a) Any order of the board affecting the classification, role and scope, and program of any institution of higher education may be entered only after:

(1) a written factual report and recommendations from the commissioner

of higher education covering the matter to be acted on have been received by the board and distributed to the governing board and the administrative head of the affected institution;

(2) the question has been placed upon the agenda for a regularly-scheduled quarterly meeting; and

(3) the governing board of the affected institution has had an opportunity to be heard.

(b) Notice of the board's action shall be given in writing to the governing board concerned not later than four months preceding the fall term in which the change is to take effect.

Section 61.054. Expenditures for Programs Disapproved by Board

No funds appropriated to any institution of higher education may be

expended for any program which has been disapproved by the board, unless the program is subsequently specifically approved by the legislature.

Section 61.055. Initiation of New Departments, Schools, and Programs

No new department, school, or degree or certificate program approved by the board or its predecessor, the Texas Commission of Higher Education may be initiated by any institution of higher education until the board has made a written finding that the department, school, or degree or certificate program is adequately financed by legislative appropriation, by funds allocated by the board, or by funds from other sources.

Section 61.056. Review of Legislation Establishing Additional Institutions

Any proposed statute which would establish an additional institution of higher education, except a public junior college, shall be submitted, either prior to introduction or by the standing committee considering the proposed statute, to the board for its opinion as to the state's need for the institution. The board shall report its findings to the governor and the legislature. A recommendation that an additional institution is needed shall require the favorable vote of at least two-thirds of the members of the board. A recommendation of the board shall not be considered a condition precedent to the introduction or passage of any proposed statute.

Section 61.057. Promotion of Teaching Excellence

To achieve excellence in the teaching of students at institutions and agencies of higher education, the board shall:

(1) develop and recommend:

(A) minimum faculty compensation plans, basic increment programs, and incentive salary increases;

(B) minimum standards for faculty appointment, advancement, promotion, and retirement;

(C) general policies for faculty teaching loads, and division of faculty time between teaching, research, administrative duties, and special assignments;

(D) faculty improvement programs, including a plan for sabbatical leaves, appropriate for the junior and

senior colleges and universities, respectively; and

(E) minimum standards for academic freedom, academic responsibility, and tenure;

(2) pursue vigorously and continuously a goal of having all college and university academic classes taught by persons holding the minimum of an earned master's degree or its equivalent in academic training, creative work, or professional accomplishment;

(3) explore, promote, and coordinate the use of educational television among institutions of higher education and encourage participation by public and private schools and private institutions of higher education in educational television;

(4) conduct, and encourage the institutions of higher education to conduct, research into new methods, materials, and techniques for improving the quality of instruction and for the maximum utilization of all available teaching techniques, devices, and resources including but not limited to large classes, team teaching, programmed instruction, interlibrary exchanges, joint libraries, specially-designed facilities, visual aids, and other innovations that offer promise for superior teaching or for meeting the need for new faculty members to teach anticipated larger numbers of students; and

(5) assume initiative and leadership in providing through the institutions of higher education in the state

those programs and offerings which will achieve the objectives set forth in Section 61.002 of this code.

Section 61.058. Construction Funds and development of Physical Plants

To assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, the board shall:

(1) determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;

(2) devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities, including but not limited to maximum scheduling of day and night

classes and maximum summer school enrollment;

(3) consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;

(4) require, and assist the public technical institutes, public senior colleges and universities, medical and dental units, and other agencies of higher education in developing long-range plans for campus development;

(5) endorse, or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college;

(6) develop and publish standards, rules, and regulations to guide the institutions and agencies of higher learning in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use;

(7) ascertain that the standards and specifications for new construction, repair, and rehabilitation of all buildings and facilities are in accordance with Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes); and

(8) approve or disapprove all new construction and repair and rehabilitation of all buildings and facilities at

institutions of higher education financed from any source provided that:

(A) the board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to be used to assure conformity with approved space utilization standards and the institution's approved programs and role and scope if the cost of the project is not more than $500,000, but the board may consider cost factors and the financial implications of the project to the state if the total cost is in excess of $500,000;

(B) the requirement of approval for new construction financed from other than appropriated funds applies only to projects the total cost of which is in excess of $300,000;

(C) the requirement of approval for major repair and rehabilitation of buildings and facilities applies only to projects the total cost of which is in excess of $300,000;

(D) the requirement of approval or disapproval by the board does not apply to any new construction or major repair and rehabilitation project that is specifically approved by the legislature;

(E) the requirement of approval by the board does not apply to a junior college's construction, repair, or rehabilitation financed entirely with funds from a source other than the state, including funds from ad valorem tax receipts of the college, gifts, grants, and donations to the college, and student fees; and

(F) the requirement of approval by the board does not apply to construction, repair, or rehabilitation of privately owned buildings and facilities located on land leased from an institution of higher education if the construction, repair, or rehabilitation is financed entirely from funds not under the control of the institution, and provided further that:

(i) the buildings and facilities are to be used exclusively for auxiliary enterprises; and

(ii) the buildings and facilities will not require appropriations from the legislature for operation, maintenance, or repair unless approval by the board has been obtained.

Section 61.059. Appropriations

(a) To finance a system of higher education and to secure an equitable distribution of state funds deemed to be available for higher education, the board shall perform the functions described in this section. Funding policies shall allocate resources efficiently and for institutional diversity while discouraging unnecessary duplication of course offerings between institutions as well as discouraging unnecessary construction on any campus.

(b) The board shall devise, establish, and periodically review and revise formulas for the use of the governor and the Legislative Budget Board in making appropriations recommendations to the legislature for all institutions of higher education, including the funding

of postsecondary vocational-technical programs. In carrying out its duties under this section, the board shall employ an ongoing process of committee review and expert testimony and analysis.

(c) Formulas for basic funding shall reflect the role and mission of each institution, shall emphasize funding elements that directly support faculty, and shall reflect both fixed and variable elements of cost.

(d) Not later than March 1 of every even-numbered calendar year, the board shall notify the governing boards and the chief administrative officers of the respective institutions of higher education and university systems, the governor, and the Legislative Budget Board of the formulas designated by the board to be used by the institutions in

making appropriation requests for the next succeeding biennium and shall certify to the governor and the Legislative Budget Board that each institution has prepared its appropriation request in accordance with the designated formulas and in accordance with the uniform system of reporting provided in this chapter. The board shall furnish any other assistance to the governor and the Legislative Budget Board in the development of appropriations recommendations as either or both of them may request. however, nothing in this chapter shall prevent or prohibit the governor, the Legislative Budget Board, the board, or the governing board of any institution of higher education from requesting or recommending deviations from any applicable formula or formulas

prescribed by the board and advancing reasons and arguments in support of them.

(e) The board shall present to the governor and to each legislature a comprehensive summary and analysis of institutional appropriation requests, and for that purpose each institution's request must be submitted to the board at the same time at which the request is submitted to the Legislative Budget Board. Nothing in this subsection shall be construed as supplanting the duty, responsibility, and authority of an institution of higher education or the governing board thereof to express its appropriative needs directly to the legislature or any committee thereof.

(f) The board shall recommend to the governor and the Legislative Budget Board supplemental contingent appro-

priations to provide for increases in enrollment at the institutions of higher education. Contingent appropriations may be made directly to the institutions or to the board, as the legislature may direct in each biennial appropriations act. In the event the contingent appropriations is made to the board, the funds shall be allocated and distributed by the board to the institutions as it may determine, subject only to such limitations or conditions as the legislature may prescribe.

(g) The board shall recommend to the institutions, the governor, and the Legislative Budget Board tuition policies for public technical institutes, public junior colleges, public senior colleges and universities, medical and dental units, and other agencies of higher

education and vocational and technical programs receiving support from state funds.

(h) The board shall distribute funds appropriated to the board for allocation for specified purposes under limitations prescribed by law and the rules and regulations of the board in conformity therewith, provided that no distribution or allocation may be made to any institution of higher education which has failed or refused to comply with any order of the board as long as that failure or refusal continues.

(i) The board shall make continuing studies on its own initiative or upon the request of the governor or the Legislative Budget Board of the financial needs of public higher education and all services and activities of the insti-

tutions of higher education and issue reports to the governor and the Legislative Budget Board that result from its studies.

(j) Funds appropriated to the coordinating board for vocational-technical education may be transferred by interagency contract between the two boards as required to carry out an effective and efficient transition of the administration of postsecondary vocational-technical education.

(k) The legislature shall promote flexibility in the use of funds appropriated to institutions of higher education by:

(1) appropriating base funding as a single amount that is unrestricted to use among the various funding elements

of the formula used to determine base funding; and

(2) appropriating to institutions the unexpended balance of appropriations made for the preceding fiscal year.

Section 61.0591. Incentive and Special Initiative Funding

(a) The legislature shall appropriate to the board an amount equal to not less than 10 percent of the total appropriations for base funding of general academic teaching institutions for the purpose of providing incentive and special initiative funding under this section.

(b) The board shall allocate the funds in accordance with this section and priorities, if any, established by the

legislature through bill, resolution, or appropriations rider.

(c) The board shall allocate incentive funding, as a percentage of base funding, among institutions of higher education for the purpose of rewarding institutions achieving goals set by the board in relation to:

(1) minority recruitment, retention, and academic standards maintenance;

(2) graduation rates and maintenance of academic standards;

(3) commitment to liberal arts core curriculum;

(4) commitment to continuing education;

(5) energy conservation;

(6) improvements toward maximum utilization of campus facilities;

(7) commitment to renovation and maintenance of facilities;

(8) development of articulation arrangements;

(9) proportion of accredited academic programs;

(10) assessed performance of graduates as a measure of general education outcome, including assessments based on standardized examination performance;

(11) assessed performance of graduates as a measure of specialized education outcome, including assessments based on professional licensing examination performance;

(12) evaluation of instructional programs through surveys of students, graduates, the general public, and employers;

(13) continuing and systematic peer evaluation of academic and research programs by scholars from other institutions;

(14) progress toward or attainment of long-range planning goals; and

(15) compliance with the management policies required by Section 61.0651 of this code.

(d) The board shall allocate special initiative funding among institutions of higher education to promote academic excellence. Initiative funding may be allocated to the eminent scholars program under Subchapter I, Chapter 51, of this code, or to programs established by the board to:

(1) promote teaching excellence by recognizing and rewarding outstanding teachers;

(2) provide enrichment grants to the best undergraduate programs; or

(3) provide development grants to institutions seeking to develop undergraduate and graduate programs in areas identified as a high priority.

Section 61.060. Control of Public Junior Colleges

The board shall exercise, under the acts of the legislature, general control of the public junior colleges of this state, on and after September 1, 1965. All authority not vested by this chapter or other laws of the state in the board is reserved and retained locally in each respective public junior college district or the governing board of each public junior college as provided in the applicable laws.

Section 61.061. Policies, Rules, and Regulations Respecting Junior Colleges

The board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon it by the legislature. The commissioner of higher education is responsible for carrying out these policies and enforcing these rules and regulations.

Section 61.062. Powers Respecting Junior Colleges

(a) The board may authorize the creation of public junior districts as provided in the applicable laws. In the exercise of this authority the board shall give particular attention to the need for a public junior college in the proposed district, and the ability of the

district to provide adequate local financial support.

(b) The board may dissolve any public junior college district which has failed to establish and maintain a junior college in the district within three years from the date of its authorization.

(c) The board may adopt standards for the operation of public junior colleges and prescribe rules and regulations for them.

(d) The board may require of each public junior college whatever reports it deems necessary in accordance with its rules and regulations.

(e) The board may establish advisory commissions composed of representatives of public junior colleges and other citizens of the state to provide

advice and counsel to the board with respect to public junior colleges.

Section 61.063. Listing and Certification of Junior Colleges

The commissioner of higher education shall file with the state auditor and the state comptroller on or before October 1 of each year a list of the public junior colleges in this state. The commissioner shall certify the names of those colleges that have complied with the standards, rules, and regulations prescribed by the board. Only those colleges which are so certified shall be eligible for and may receive any appropriation made by the legislature to public junior colleges.

Section 61.0631. Teacher Training Programs for Teachers of Disadvantaged Students

(a) The board shall plan, initiate, and finance programs of teacher training for the teaching of educationally, economically, socially, and culturally disadvantaged students in the public junior colleges, to be provided at selected institutions in the state which prepare people to teach in the public junior colleges.

(b) The board shall sponsor and finance:

(1) summer institutes for junior college teachers on how to teach the disadvantaged student; and

(2) regional in-service training workshops in different parts of the state for those teachers currently teaching remedial-compensatory courses and programs for disadvantaged students.

(c) The board shall serve as a central clearinghouse of information on remedial-compensatory education courses and programs for all public junior colleges in order to provide a statewide coordinated effort in the development of these courses and programs.

(d) The legislature shall appropriate funds to implement the provisions of this section.

Section 61.064. Cooperative Undertakings with Private Colleges and Universities

The board shall:

(1) enlist the cooperation of private colleges and universities in developing a statewide plan for the orderly growth of the Texas system of higher education;

(2) encourage cooperation between public and private institutions of higher education wherever possible and may enter into cooperative undertakings with those institutions on a shared-cost basis as permitted by law;

(3) consider the availability of degree and certificate programs in private institutions of higher education in determining programs for public institutions of higher education; and

(4) cooperate with these private institutions, within statutory and constitutional limitations, to achieve the purposes of this chapter.

Section 61.065. Reporting; Accounting

(a) The coordinating board shall adopt and recommend management policies applicable to institutions of higher

education in relation to management of human resources and physical plants. The policies shall be designed to streamline operations and improve accountability.

(b) The human resources management policies shall be designed to increase productivity. The policies may relate to any human resources management issue, including:

(1) the improvement of health benefits for institutional employees through statewide group health benefit programs;

(2) the creation of a management training system to assist institutions in developing personnel management systems, in complying with equal employment opportunity and affirmative action requirements, and in maintaining personnel records;

(3) the requirement of five-year plans to manage personnel overhead, to establish position control systems for administrative personnel, and to implement productivity improvement programs; and

(4) the development of institutional plans to identify, recruit, and develop outstanding administrators of institutions of higher education.

(c) The physical plant management policies shall be designed to maintain the state's investment in land and facilities. The policies may require institutions to:

(1) include estimated maintenance costs for the life of the building in any request for approval of new construction;

(2) end the practice of deferring building maintenance;

(3) achieve maximum utilization of classroom and laboratory facilities;

(4) prepare annual five-year plans for major repair and rehabilitation projects and for new construction, regardless of funding source; and

(5) implement policies and practices to reduce utility costs.

Section 61.066. Studies and Recommendations; Reports

(a) The board shall make studies and recommendations directed toward the achievement of excellence or toward improved effectiveness and efficiency in any phase of higher education in Texas and shall report on their studies and recommendations to the governor and the

legislature. The officials of the institutions of higher education shall comply with requests for reports or information made by the board or the commissioner. To assure that the institutions of higher education timely file various reports with the appropriate agencies, the board shall receive and distribute the reports required by statute to be filed with the governor, the Legislative Budget Board, the state auditor, the state library, and any other state agency.

(b) The board shall prepare biennial reports with reference to new programs in higher education as well as restructuring existing programs to meet the changing needs of the populace of the state. This will include but will not be limited to projected student enrollments

at the various institutions, the areas of study which they will enter, and the projected demand for the various professional activities. In addition, the board shall make specific recommendations regarding the physical needs at each campus with the physical, mental, and education needs of the student population in mind. In order to insure adequate time available for study of the reports, they shall be distributed to the appropriate offices as required by statute no later than the end of the fiscal year prior to the convening of the legislature.

Section 67.067. Contracts

In achieving the goals outlined in this chapter and in performing the functions assigned to it, the board may contract with any other state govern-

mental agency as authorized by law, with any agency of the United States, and with corporations and individuals. The board shall propose, foster, and encourage the use of interagency contracts among the institutions of higher education to reduce duplication and achieve better use of personnel and facilities.

Section 61.068. Gifts, Grants, Donations

The board may accept gifts, grants, or donations of personal property from any individual, group, association, or corporation, or the United States, subject to such limitations or conditions as may be provided by law. Gifts, grants, or donations of money shall be deposited in the state treasury and expended in accordance with the specific purpose for which given, under such

conditions as may be imposed by the donor and as provided by law.

Section 61.069. Board Report

The board shall make a report of its activities to the governor annually and to the legislature not later than December 1 prior to the regular session of the legislature.

Section 69.070. Duties of Central Education Agency not Affected

None of the duties or functions assigned by statute to the central education agency, except those relating to public junior colleges, are affected by this chapter.

Section 69.071. Contract with United States for New Medical School

The board may negotiate and contract with the appropriate agency or agencies of the United States for the estab-

lishment, operation, and maintenance of a medical school to be located at or in connection with any Veterans Administration facility that may be made available for the purpose. In any such contract, the board shall designate one of the two university systems or another appropriate state-supported institution of higher education under whose governing board the medical school shall be operated.

Section 61.072. Regulation of Foreign Student Tuition

The board shall adopt rules and policies to be followed by the governing boards of institutions of higher education in fixing foreign student tuition fees pursuant to Subsections (h) and (i), Section 54.051, of this code.

Section 61.073. Allocation of Funds for Tuition and Fee Exemptions

(a) Funds shall be appropriated to the Coordinating Board, Texas College and University System, for allocation to each junior and community college in an amount equal to the total of all tuition and laboratory fees foregone each semester as a result of the tuition and laboratory fee exemptions required by law in Sections 54.201 through 54.209, Texas Education Code.

(b) The governor board of each junior or community college shall report to the coordinating board the number of students enrolled on the 12th class day of each semester who were exempt from the payment of tuition and laboratory fees which would have been collected from the students if they had not been exempt from

the payment thereof. The coordinating board shall remit to each junior and community college an amount equal to the tuition and laboratory fees foregone from the funds appropriated for that purpose.

Section 61.074. Official Grade Point Average

The board shall be rule establish a mandatory uniform method of calculating the official grade point average of a student enrolled in, or seeking admission to a graduate or professional school of, an institution of higher education.

Section 61.077. Joint Advisory Committee

(a) There is hereby created a joint advisory committee for the purpose of advising the Coordinating Board, Texas College and University System, and the State Board of Education in coordinating postsecondary vocational-technical acti-

vities and vocational-technical teacher education programs offered or proposed to be offered in the colleges and universities of this State. The committee shall be composed of three members from the State Board of Education, appointed by the chairman of the board and three members from the Coordinating Board, Texas College and University System, appointed by the chairman of the board, and one member of the Technical-Vocational Education Advisory Council, appointed by the chairman of the council. A member of the coordinating board shall be designated as chairman of the joint advisory committee by the chairman of the coordinating board. The committee shall hold regular annual meetings as called by the chairman.

(b) The purposes of this committee shall include the following:

(1) to advise the two boards on the coordination of postsecondary vocational-technical education and secondary vocational-technical education;

(2) to facilitate the transfer of responsibilities for the administration of postsecondary vocational-technical education from the State Board of Education to the Coordinating Board, Texas College and University System, in accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act, Public Law 98-524; and

(3) to advise the State Board of Education, when it acts as the State Board of Vocational Education, on the following:

(A) the allocation between secondary and postsecondary education of funds received by the State of Texas from the United States government under the Vocational Education Act of 1963, as amended, and other federal statutes relating to postsecondary vocational-technical education;

(B) the transfer of federal funds to the coordinating board for allotment to eligible public postsecondary institutions of higher education;

(C) the vocational-technical education funding for projects and institutions as determined by the coordinating board when the State Board of Vocational Education is required by federal law to endorse such determinations;

(D) the development and updating of the state plan for vocational-technical education and the evaluation of programs, services, and activities of postsecondary vocational-technical education and such amendments to the state plan for vocational-technical education as may relate to postsecondary education; and

(E) other matters related to postsecondary vocational-technical education.

SUBCHAPTER D. CONTRACTS WITH BAYLOR COLLEGE OF MEDICINE AND BAYLOR UNIVERSITY COLLEGE OF DENTISTRY

Section 61.091. Definitions

In this subchapter:

(1) "Bona fide Texas resident" means a person defined as a "resident student" in Subchapter B, Chapter 54 of

this code,, and rules, regulations, and interpretations promulgated under that subchapter by the board or the Commission on Higher Education.

(2) "Established public medical schools" means The University of Texas Medical Branch and Southwestern Medical School.

(3) "Undergraduate medical student" means a person enrolled for a regular schedule of courses in pursuit of a Doctor of Medicine degree.

(4) "Scholastic year of disbursement" means the period of time commencing on September 1 of each calendar year and terminating on August 31 of the next succeeding calendar year. The first scholastic year of disbursement commences on September 1, 1970, and terminates on August 31, 1971.

(5) "Average annual state tax support per undergraduate medical student enrolled at the established public medical schools" means an amount calculated by dividing the net general revenue appropriations to the established public medical schools for the fiscal year next preceding the scholastic year of disbursement by the total number of undergraduate medical students enrolled in those schools on October 15 of the fiscal year.

Section 61.092. Contracts with Baylor College of Medicine

The board may contract with Baylor College of Medicine for the administration, direction, and performance of all services and the provision, maintenance, operation, and repair of all buildings, facilities, structures,

equipment, and materials necessary or proper to the education, training,, preparation, or instruction of bona fide Texas resident undergraduate medical students. However, nothing in this subchapter may be construed to empower the board to limit, alter, modify, or in any other manner change or approve, or negotiate for changes in or approval of, the administration, direction, and performance of these services or the provision, maintenance, operation, and repair of buildings, facilities, structures, equipment, or materials.

Section 61.093. Disbursements

(a) In the exercise of the authority described in Section 61.092 of this code, the board may disburse to Baylor College of Medicine, during each scholastic year of disbursement, an

amount equal to the average annual state tax support per undergraduate medical student at the established public medical schools, multiplied by the number of bona fide Texas resident undergraduate medical students enrolled at Baylor College of Medicine. However, the board may never disburse an amount exceeding the amount appropriated by the legislature for this purpose.

(b) Subject to the limitations described in Subsection (a) of this section, the board may establish, by contract with Baylor College of Medicine, the method by which the disbursement shall be accomplished, and may prescribe reasonable rules and regulations necessary to ascertain the average annual state tax support per undergraduate

medical student at the established public medical schools.

(c) Money appropriated for payment of contracts under the authority of Sections 61.092 and 61.094 of this code shall be paid to the Baylor College of Medicine and the Baylor College of Dentistry as follows:

(1) 24 percent of the yearly entitlement of each college shall be paid in two equal installments to be made on or before the 25th day of September and October; and

(2) 76 percent of the yearly entitlement of each college shall be paid in eight equal installments to be made on or before the 25th day of November, December, March, April, May, June, July, and August.

(d) The amount of any installment required by this section may be modified to provide the Baylor College of Medicine and the Baylor College of Dentistry with the proper amount to which each college may be entitled by law and to correct errors in the allocation or distribution of funds. If an installment under this section is required to be equal to other installments, the amount of other installments may be adjusted to provide for that equality. A payment under this section is not invalid because it is not equal to other installments.

Section 61.094. Contracts with Baylor University of Dentistry

The board may contract with the Baylor College of Dentistry, to the extent it is owned by a nonprofit corporation distinct from the Baptist

Church, for the education, training, preparation, or instruction of bona fide Texas resident undergraduate dental students enrolled for a regular schedule of courses in pursuit of a Doctor of Dentistry degree, in the same manner as provided in this subchapter for medical students, including all powers with respect to medical students, and all powers with respect to the Board and the Baylor University College of Medicine granted in this subchapter. For the purposes of this section, The University of Texas Dental Branch at Houston shall be used to calculate the average amount state tax support per undergraduate dental student.

Section 61.095. Restrictions

The rights, powers, and authority granted in this subchapter shall not be

subject to restriction, limitation, obligation, or requirement provided in Section 61.058 of this code or Articles 665 through 678m, inclusive, of Vernon's Texas Civil Statutes,[1] notwithstanding any other provision in this subchapter.

Section 61.096. Restriction: Medical School Admission Policies

As a restriction of the authority granted to the Coordinating Board by Section 61.092 and 61.093 of this Code, no contract shall be entered into with the Baylor College of Medicine promulgates appropriates rules and regulations pertaining to the admission of students to medical schools under its

---

[1]Repealed or abolished; see, now, Vernon's Ann.Civ.St. arts. 601b, 678f and V.T.C.A. Human Resources Code, Sec. 94.001 et seq.

jurisdiction which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students, and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural

Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least $100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student.

Section 61.097. Contracts with Respect to Resident Physicians

(a) The board shall contract with the Baylor College of Medicine for the administration, direction, and performance of services necessary or proper to the education, training, development, and preparation of resident physicians for a career in medicine. Included in those

services shall be the payment and furnishing by the medical school to the resident physicians of all compensation that has previously been paid or furnished by the hospital or hospitals in which the resident physicians have been educated and trained.

(b) In Sections 61.097 and 61.098 of this code:

(1) "Resident physician" means a person who is appointed a resident physician by the Baylor College of Medicine and who:

(A) has received a Doctor of Medicine or a Doctor of Osteopathic Medicine degree from the Baylor College of Medicine or from one of the schools of medicine listed in Section 58.001 of this code; or

(B) is a citizen of Texas and has received a Doctor of Medicine or a Doctor of Osteopathic Medicine degree from some other school of medicine that is accredited by the Liaison Committee on Medical Education or by the Bureau of Professional education of the American Osteopathic Association.

(2) "Primary teaching hospital" is a hospital at which the Baylor College of Medicine educates and trains both resident physicians an undergraduate medical students.

(3) "Compensation" includes stipends; payments, if any, for services rendered; and fringe benefits when applied to payments to or for the benefit of resident physicians.

(c) A person may not be considered a resident physician for a period of time

longer than is ordinarily and customarily required for a resident physician to complete a medical specialty program approved by the Accrediting Council on Graduate Medical Education for the specialty in which the resident physician seeks certification as a diplomate and to obtain the certification for the appropriate board or agency approved by the American Board of Medical Specialties.

(d) Notwithstanding the provisions of Subsection (c) of this section, a person may not be considered a resident physician under this section for period of time longer than four years.

(e) The total number of the first-year resident physicians compensated under this section and Chapter 58.001 of this code may not exceed the combined total number of persons in the previous

year's graduating classes of the schools listed in Section 58.001 of this code and the Baylor College of Medicine. The Baylor College of Medicine shall give priority consideration to applicants who demonstrate a willingness to practice in medically underserved areas of Texas.

(f) It is the intent of this section that eventually at least 50 percent of the first-year resident physicians appointed by medical schools shall be in the primary care areas of family medicine, internal medicine, pediatrics, geriatrics, and obstetrics/gynecology, with 25 percent of those residents in family practice.

(g) In the exercise of the authority under Subsection (a) of this section, the board shall disburse to the Baylor College of Medicine, out of funds

appropriated by the legislature to the board for that purpose, an amount not be exceed $15,000 per fiscal year of disbursement for each resident physician appointed by the school for that year. The board shall establish, by contract with the Baylor College of Medicine, the method by which the disbursement shall be accomplished. The funds authorized by this section are separate from and in addition to the funds authorized in Sections 61.092 and 61.093 of this code.

Section 61.098. Contract Provisions

(a) Notwithstanding the provisions of Section 61.092 of this code, the board shall include in the contract that it makes with the medical school under Section 61.097 of this code provisions that will effectuate the terms and conditions provided in this section.

(b) The money appropriated to the board and disbursed to the Baylor College of Medicine under Section 61.097 of this code shall be spent by the school exclusively for the education, training, development, and preparation of resident physicians for a career in medicine.

(c) If a resident physician does not perform in that capacity during an entire fiscal year of disbursement, the compensation paid to the person by the medical school shall be reduced proportionately to cover only the part of the fiscal year during which such performance is actually rendered.

(d) If a resident physician is compensated by an agency or institution of the federal government or by any other agency or institution other than a primary teaching hospital on account of

the person's performance as a resident physician, the compensation that would otherwise be paid to the person by the medical school shall be reduced by the amount of the compensation actually received by the person from such agency or institution. If the medical school receives from an agency or institution of the federal government or from any other agency or institution other than a primary teaching hospital compensation for the performance of resident physicians' duties by any of the school's resident physicians to or for the benefit of such agency or institution to the extent of the compensation actually received by the medical school, the school is prohibited from spending funds that are appropriated and disbursed under Section 61.097 of this code and that

would otherwise be available to pay the same resident physicians for the performance of the same resident physician duties.

(e) If the medical school receives fro the Coordinating Board, Texas College and University System, a sum granted for the education, training, development, and preparation of the school's family practice resident physicians, to the extent of the sum actually received by the medical school, the school is prohibited from spending funds that are appropriated and disbursed under Section 61.097 of this code and that would otherwise be available to pay the same family practice resident physicians for the same education, training, development, and preparation.

(f) If at any time the medical school determines that it does not have sufficient available funds from legislative appropriations and other sources to support adequately the full number of resident physicians that the school deems to be required in order to provide the delivery of the best possible medical care to the citizens of this state, the school may assign and place for education and training in any hospital or hospitals with which the school has a resident physician affiliation agreement any of its resident physicians that cannot be supported adequately from the funds available for that purpose. During the period for which a resident physician is assigned and placed in a hospital or hospitals under this subsection, the resident

physician shall directly or indirectly receive all or a primary portion of his or her compensation from the hospital or hospitals just as has been ordinarily and customarily done before the adoption of this section. The exact method and manner of compensating the resident physician shall be set forth in the resident physician affiliation agreement entered into between the school and the hospital or hospitals.

Section 61.099. Appointment of Resident Physicians Under Certain Conditions

Notwithstanding any other provisions of Sections 61.097 and 61.098 of this code, if at any time the medical school determines that it cannot provide one of its primary teaching hospitals with resident physicians who qualify under

Subdivision (1) of Subsection (b) of Section 61.097 of this code in sufficient quantity or meet the standard that the medical school deems necessary in order to provide the delivery of the best possible medical care to the citizens of this state, until the medical school is able to provide the hospital with a sufficient quantity and kind of resident physicians who do qualify, the medical school may appoint, to be educated and trained in the hospital, resident physicians who are not citizens of Texas but otherwise qualify under Subdivision (1) of Subsection (b) of Section 61.097 of this code and may compensate the resident physicians as if they did qualify under the provisions of that section.

SUBCHAPTER E. CONTRACTS WITH THE TEXAS COLLEGE OF OSTEOPATHIC MEDICINE

Section 61.201. Definitions

In this subchapter, unless context otherwise requires:

(1) "Bona fide Texas resident" means a person defined as a "resident student" in Subchapter B, Chapter 54, of this code,[1] and rules, regulations, and interpretations promulgated thereunder by the coordinating board or the Commission on Higher Education.

(2) "Established public medical schools" means The University of Texas Medical Branch and Southwestern Medical School.

(3) "Undergraduate medical student" means a person enrolled for a

---

[1]Section 54.051 et seq.

regular schedule of courses in pursuit of a Doctor of Medicine degree or Doctor of Osteopathy degree.

(4) "Scholastic year of disbursement" means a period of time commencing on September 1 of each calendar year and terminating on August 31 of the next succeeding calendar year. The first scholastic year of disbursement shall commence on September 1, 1971, and shall terminated on August 31, 1972.

(5) "Average annual state support per undergraduate medical student enrolled at the established public medical schools" means an amount calculated by dividing the state appropriations for undergraduate medical education to the established public medical schools for the fiscal year next preceding the scholastic year of

disbursement by the total number of undergraduate medical students enrolled in those schools on October 15 of the fiscal year.

Section 61.202. Contracts with Texas College of Osteopathic Medicine

So long as there is no public school of osteopathic medicine in this state, the coordinating board is hereby vested with the right, power, and authority to contract with Texas College of Osteopathic Medicine for the preparation or instruction of bona fide Texas resident undergraduate medical students as Doctors of Osteopathic Medicine.

Section 61.203. Disbursements

(a) In the exercise of the rights, powers, and authority described in Section 61.202 of this code, the

Coordinating Board may disburse to Texas College of Osteopathic Medicine, during each scholastic year of disbursement, an amount equal to the average annual state support per undergraduate medical student at the established public medical schools, as certified pursuant to Section 61.201(5) of this code, multiplied by the number of bona fide Texas resident undergraduate medical students enrolled at Texas College of Osteopathic Medicine; provided, however, that the coordinating board shall never disburse an amount exceeding the amount appropriated by the legislature for this purpose. Expenditures by the Texas College of Osteopathic Medicine of any state funds received by it shall be limited to the payment of instructional costs, general administration and student services, faculty

salaries, departmental operating expense, and library. Any payment paid in whole or in part from funds appropriated for this purpose shall conform to the practices and limitations common to established public medical schools in Texas and shall be set forth in writing annually by the board of regents of The University of Texas System in substantially the same form as applicable to such public medical schools by such board of regents, and made a part of each disbursement contract.

(b) Subject to the limitations described in this section, the coordinating board is hereby granted the right, power, and authority to establish, by contract, with Texas College of Osteopathic Medicine the method by which the above-described disbursement shall be

accomplished, and may prescribe such reasonable rules and regulations as are necessary to carry out the provisions of this section including, but not limited to, a prior consultation on the annual budget and a post audit of expenditures in a manner acceptable to the state auditor.

Section 61.204. Restrictions

The rights, powers, and authority granted herein shall not be subject to restriction, limitation, obligation, or requirement provided in Section 61.058 of this code or Chapter 4, Title 20, Revised Civil Statutes of Texas, 1925, as amended,[1] notwithstanding any other provision hereof.

---

[1] Vernon's Ann.Civ.St. art. 665 et seq. (repealed; see, now, generally, Vernon's Ann.Civ.St. art. 601b).

SUBCHAPTER F. TUITION EQUALIZATION GRANTS

Section 61.221. Tuition Equalization Grants Authorized

In order to provide the maximum possible utilization of existing educational resources and facilities within this state, both public and private, the Coordinating Board, Texas College and University System, is authorized to provide tuition equalization grants to Texas residents enrolled in any approved private Texas college or university, based on student financial need, but not to exceed a grant amount of more than that specified in the appropriation by the legislature.

Section 61.222. Approved Institutions

The coordinating board shall approve only those private or independent

colleges, universities, associations, agencies, institutions, and facilities as are located within this state, which meet program standards and accreditation comparable to public institutions as determined by the board.

Section 61.223. Nondiscrimination Regulation

The coordinating board shall make such regulations as may be necessary to insure compliance with the Civil Rights Act of 1964, Title VI (Public Law 88-352),[1] in regard to nondiscrimination in admission or employment.

Section 61.224. Application of General Appropriations Act Riders

Those riders in the General Appropriations Act that apply to

---

[1] 42 U.S.C.A. Sec. 2000d et seq.

expenditure of state funds at state-supported colleges and universities shall also apply to expenditure of state funds at any college or university which any student receiving aid under this subchapter may attend.

Section 61.225. Qualifications For Grant

To be eligible for a tuition equalization grant, a person must:

(1) be a Texas resident as defined by the coordinating board and meet, at a minimum, the resident requirements defined by law for Texas resident tuition in fully state-supported institutions of higher education;

(2) be enrolled for at least one-half of a full course load conforming to an individual degree plan in an approved college or university;

(3) be required to pay more tuition than is required at a public college or university and be charged no less than the regular tuition required of all students enrolled at the institution;

(4) establish financial need in accordance with procedures and regulations of the coordinating board;

(5) not be a recipient of any form of athlete scholarship; and

(6) have complied with other requirements adopted by the coordinating board under this subchapter.

Section 61.226. Application of Laws to Receiving Institutions

Any college or university receiving any benefit under the provisions of this subchapter, either directly or indirectly, shall be subject to all present or future laws enacted by the legislature.

Section 61.227. Payment of Grant; Amount

(a) On receipt of a student application, enrollment report, and certification of the amount of financial need from an approved institution, the coordinating board shall certify the amount of the tuition equalization grant based on financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature, or more than the difference between the tuition at the private institution attended and the tuition at public colleges and universities.

(b) The proper amount of the tuition grant shall be paid to the student through the college or university in which he is enrolled.

(c) In no event shall a tuition equalization grant paid pursuant to this subchapter in behalf of any student during any one fiscal year exceed an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at public senior colleges and universities, as determined by the board. A grant to a part-time student shall be made on a pro-rata basis of a full-time equivalent.

Section 61.228. Implementation of Grant Program

This subchapter applies to freshmen (first year) students beginning in the fall semester of 1971; to freshmen and sophomores in 1972; to freshmen, sophomore, and juniors in 1973; and to

all students attending approved private institutions in 1974 and thereafter.

Section 61.229. Promulgation and Distribution of Regulations

(a) The coordinating board may make reasonable regulations, consistent with the purposes and policies of this subchapter, to enforce the requirements, conditions, and limitations expressed in this subchapter.

(b) The coordinating board shall make such regulations as may be necessary to comply with the provisions of Article I, Section 7, Article III, Section 51, and other parts of the Texas Constitution.

(c) The coordinating board shall distribute copies of all regulations adopted pursuant to this subchapter to each eligible institution.

SUBCHAPTER G. REGULATION OF PRIVATE DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION

Section 61.301. Purpose

It is the policy and purpose of the State of Texas to prevent deception of the public resulting from the conferring and use of fraudulent or substandard college and university degrees; it is also the purpose of this subchapter to regulate the use of academic terminology in naming or otherwise designating educational institutions, the advertising, solicitation or representation by educational institutions or their agents, and the maintenance and preservation of essential academic records. Because degrees and equivalent indicators of educational attainment are used by employers in judging the training of

prospective employees, by public and private professional groups in determining qualifications for admission to and continuance of practice, and by the general public in assessing the competence of persons engaged in a wide range of activities necessary to the general welfare, regulation by law of the evidences of college and university educational attainment is in the public interest. To the same end the protection of legitimate institutions and of those holding degrees from them is also in the public interest.

Section 61.302. Definitions

In this subchapter:

(1) "Degree" means any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's,

master's, doctor's, and their equivalents, which signifies, purports to, or is generally taken to signify satisfactory completion of the requirements of all or part of a program of study leading to an associate, bachelor's, master's, or doctor's degree or its equivalent.

(2) "Private institution of higher education" or "institution" means an educational institution which:

(A) is not an institution of higher education as defined by Section 61.003(7) of this code;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applicable to a degree.

(3) "Agent" means a person employed by or representing a private institution of higher education who solicits students for enrollment in the institution.

(4) "Commissioner" means the Commissioner of Higher Education.

(5) "Board" means the Coordinating Board, Texas College and University System.

(6) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(7) "Program of study" means any course or grouping of courses which are alleged to entitle a student to a degree or to credits alleged to be applicable to a degree.

(8) "Recognized accrediting agency" means an association or organization so designated by rule of the board for the purposes of this subchapter.

(9) "Educational or training establishment" means an enterprise that would otherwise be a private institution of higher education, except the enterprise does not provide courses or credits alleged to be applicable to a degree.

(10) "Representative" includes a recruiter, agent, tutor, counselor, instructor, and other instructional and support personnel.

Section 61.303. Exemptions

(a) The provisions of this subchapter do not in any way apply to an institution which is fully accredited by a recognized accrediting agency, or an institution or degree program that has received approval by a state agency authorizing the institution's graduates to take a professional or vocational state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

(b) The exemptions provided by Subsection (a)(1) apply only to the extent that an institution is accredited, and if

an institution offers to award a degree for which it is not accredited, the exemption does not apply.

(c) An exemption institution or person may be issued a certificate of authorization to grant degrees.

(d) An exempt institution or person would continue in that status only so long as it maintained accreditation standards acceptable to the board.

(e) The board shall provide for due process and procedures for revoking the exemption status of an institution or person.

(f) A private institution of higher education may not establish or operate a branch campus, extension center, or other off-campus unit in Texas except as provided by Subsection (g) of this

section or as provided under the rules of the board.

(g) Subsection (f) of this section does not affect the exemption under Subsection (a)(1) of this section of an accredited institution or a separately accredited branch, extension center, or off-campus unit of the institution if:

(1) the institution, branch, center, or unit was accredited prior to January 1, 1981;

(2) the institution files with the board the name and location of its home campus and each branch, center, or unit that was accredited prior to that date; and

(3) the institution and each separately accredited branch, center, or unit maintains accreditation by the

accrediting agency recognized by the board as of that date.

(h) This subchapter does not apply to a private law school charter by the secretary of state and in operation on September 1, 1985. This subsection expires September 1, 1988.

Section 61.304. Requisite Authority to Grant Degrees and Offer Courses

A person may not grant or award a degree on behalf of a private institution of higher education unless the institution has been issued a certificate of authority to grant the degree by the board in accordance with the provisions of this subchapter. A person may not represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or

institution except under conditions and in a manner specified and approved by the board. The board is empowered to specify and regulate the manner, condition, and language used by an institution or person or agents thereof in making known that the person or institution holds a certificate of authority and the interpretation of the significance of such certificate.

Section 61.305. Application for Certificate of Authority

(a) A private institution of higher education that has been in operation for not less than two years may apply to the board for a certificate of authority to grant a degree in a specified program of study on application forms provided by the board.

(b) The application form shall contain the name and address of the institution; purpose of the institution; names of the sponsors or owners of the institution; regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of member of the faculty who will, in fact, teach in the program of study, with the highest degree held by each; a full description of the degree or degrees to be awarded and the course or courses of study prerequisite thereto; a description of the facilities and equipment utilized

by the institution; and any additional information which the board may request.

(c) The application must be accompanied by an initial fee set by the board in an amount not to exceed the average cost of reviewing the applica-tion, including the cost of necessary consultants.

Section 61.306. Issuance of Certificate

(a) The board may issue a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if it finds that the applicant meets the standards established by the board for certification.

(b) A certificate of authority to grant a degree or degrees is valid for a

period of two years from the date of issuance.

Section 61.307. Amendments to Applications

(a) The chief administrative officers of each institution which has been issued a certificate of authority shall immediately notify the board of nay change in administrative personnel, faculty, or facilities at the institution or any other changes of a nature specified by the board.

(b) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by current certificate may file an application for amendment of the certificate with the board. The application shall be accompanied by a fee of $75 to cover the cost

of program evaluation. If the board finds that the new program of study meets the required standards, the board may amend the institutions certificate accordingly.

Section 61.308. Renewal of Certificate

(a) A private institution of higher education which desires to renew its certificate of authority shall apply to the board at least 60 days prior to the expiration of the current certificate.

(b) The application for renewal shall be made on forms provided by the board and shall be accompanied by a renewal fee set by the board in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants.

(c) The board shall renew the certificate if it finds that the institution has maintained all requisite standards and has complied with all rules and regulations promulgated by the board.

(d) A private institution of higher education may be granted successive certificates of authority for a period not to exceed the number of years provided by rule of the board. The board rules must recognize that certification by the state is intended to safeguard the public interest until an institution has developed the strength to satisfy appropriate accreditation standards and it is intended that an institution advance from certification status to fully accredited status in due course.

(e) If, after a good-faith effort, an institution cannot achieve accredita-

tion within the period of time prescribed by the board, the institution may appeal for extension of eligibility for certification because of having been denied accreditation due to policies of the institution based on religious beliefs or other good and sufficient cause as defined by rule of the board. The board shall consider the application of any accreditation standard that prohibited the institution as a prima facie justification for extending the eligibility for certification if all other standards of the board are satisfied.

Section 61.309. Revocation of Certificate of Authority

The board may revoke a certificate of authority to grant degrees at any time if it finds that:

(1) any statement contained in an application for a certificate is untrue,

(2) the institution has failed to maintain the faculty, facilities, equipment, and programs of study on the basis of which the certificate was issued;

(3) advertising utilized on behalf of the institution is deceptive or misleading; or

(4) the institution has violated any rule or regulation promulgated by the board under the authority of this subchapter.

Section 61.310. Appeal

(a) An institution whose application for an original, amended, or renewal certificate of authority to grant degrees is denied by the board is entitled to

written notice of the reasons for the denial and may request a hearing before the board. The hearing shall be held within 120 days after written request is received by the board.

(b) The board shall conduct hearings, and a decision of the board may be appealed, in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Section 61.311. Rules and Regulations

(a) The board shall promulgate standards, rules, and regulations governing the issuance of certificates of authority.

(b) The board may delegate to the commissioner such authority and responsibility conferred on the board by this

subchapter as the board deems appropriate for the effective administration of this subchapter.

Section 61.313. Use of the Term "College" or "University"

(a) A person may not use the term "college" or "university" in the official name or title of a private institution of higher education established after the effective date of this subchapter unless the institution has been issued a certificate of authority to grant a degree or degrees.

(b) A person may not use the term "college" or "university" in the official name or title of an educational or training establishment.

Section 61.314. Advisory Council on Private Degree-Granting Institutions of Higher Education

(a) The board shall appoint an advisory council on private degree-granting institutions of higher education consisting of six members with experience in the field of higher education and representative of private institutions of higher education in the State of Texas which are exempt from the provisions of this subchapter. Council members serve for terms of two years from the date of their appointment and are entitled to reimbursement for actual expenses incurred in carrying out the work of the council.

(b) The council shall advise the board on standards and procedures to be used in carrying out the provisions of this subchapter.

Section 61.315. Agents and Records

The authorized or certified institutions may be required to furnish a list of their agents to the board, and to maintain records of students enrolled, credits awarded, and degrees awarded in a manner specified by the board.

Section 61.316. Duty of Prosecuting Attorney

The board shall report any information concerning possible violation of this subchapter to the appropriate prosecuting attorney of the county in which the activity is occurring or has occurred, and he shall make necessary investigations. The appropriate prosecuting attorney shall immediately prosecute or bring suit to enjoin any violation of this subchapter which he discovers.

Section 61.317. Penalties

(a) Any person who confers or offers to confer a degree on behalf of a private institution of higher education subject to the provisions of this subchapter which has not been issued a certificate of authority to grant degrees is guilty of a misdemeanor and upon conviction is subject to a fine of not less that $1,000 nor more than $5,000. Each degree conferred without authority constitutes a separate offense.

(b) Any person who establishes a private institution of higher education and uses the term "college" or "university" in the official name of the institution without first having been issued a certificate of authority to grant degrees for the institution or any person who establishes an educational or

training establishment and uses the term "college" or "university" in the official name or title of the establishment is guilty of a misdemeanor and upon conviction is subject to a fine not less than $1,000 nor more than $3,000.

(c) Any agent who solicits students for enrollment in a private institution of higher education subject to the provisions of this subchapter without a certificate of registration is guilty of a misdemeanor and on conviction is subject to a fine of not less than $500 nor more than $1,000.

(d) Any operations which are found after due process to be in fraudulent violation of this act shall be terminated.

SUBCHAPTER H. REGULATION OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION ESTABLISHED OUTSIDE THE BOUNDARIES OF THE STATE OF TEXAS

Section 61.401. Definitions

In this subchapter:

(1) "Public institution of higher education" includes any senior college, university, community college, technical institute, or junior college or the equivalent which is controlled by a public body organized outside the State of Texas.

(2) "Coordinating Board" means the Coordinating Board, Texas College and University System.

Section 61.402. Requisite Approval

Public institutions of higher education established outside the boundaries of the State of Texas must

have the approval of the coordinating board before offering a course or a grouping of courses within the State of Texas.

Section 61.403. Rules and Regulations

The coordinating board shall prepare rules and regulations which, when properly followed, may qualify a public institution of higher education established outside the boundaries of the State of Texas to offer a course or a grouping of courses within the State of Texas.

Section 61.404. Procedures in Case of Violation

If the coordinating board obtains evidence that a public institution of higher education established outside the boundaries of the State of Texas is in apparent violation of this subchapter or

of rules and regulations adopted pursuant to this subchapter, the coordinating board shall take appropriate action to terminate its operation within the boundaries of the State of Texas.

Section 61.405. Advisory Committees

The coordinating board may appoint such advisory committees as deemed useful for the effective administration of this subchapter.

SUBCHAPTER I. CONTRACTS FOR MEDICAL RESIDENCY PROGRAMS

Section 61.501. Definitions

As used in this subchapter:

(1) "Medical school" means the medical school at The University of Texas Health Science Center at Houston, the medical school at The University of Texas Health Science Center at Dallas, the medical school at The University of Texas

Medical Branch at Galveston, the Texas Tech University School of Medicine, the Baylor College of Medicine, the Texas College of Osteopathic Medicine, or the Texas A & M University Medical Program.

(2) "Approved family practice residency training program" means a graduate medical education program operated by a medical school, licensed hospitals, or nonprofit corporations which has been approved for training physicians in family practice and for the receipt of state funds for that purpose by the board after receiving the recommendation of the Family Practice Residency Advisory Committee.

Section 61.502. Contracts

The board may contract with a medical school, licensed hospitals, or nonprofit corporations for the purpose of

establishing and operating an approved Family Practice Residency Training Program and may compensate the medical school, licensed hospitals, or nonprofit corporations on a formula approved by the board based upon the number of resident physicians in the training program.

Section 61.053. Rules and Regulations

(a) Pursuant to a contract, the board may disburse through the designated project director to a medical school, licensed hospitals, or nonprofit corporations funds for the purpose of the graduate training of physicians in an approved family practice residency training program. The project director shall be the chairman of the Department of Family Practice in a medical school or the program director of an approved

family practice residency training program operated by licensed hospitals or nonprofit corporations. The project director shall, in accordance with such rules as the board may adopt, make timely reports directly to the board concerning the development and progress of the family practice training program.

(b) The board may establish by contract the method or manner of the disbursement to the project director.

Section 61.505. Advisory Committee

(a) The Family Practice REsidency Advisory Committee is created and shall consist of 12 members. One member shall be a licensed physician appointed by the Texas Osteopathic Medical Association; two members shall be licensed physicians appointed by the Association of Directors of Family Practice Training Programs; two

members shall be administrators of hospitals in which an approved family practice residency training program operates and shall be appointed by the Texas Hospital Association; one member shall be a licensed physician appointed by the Texas Medical Association; two members shall be licensed physicians appointed by the Texas Academy of Family Physicians; three members of the public shall be appointed to the committee by the governor; and by virtue of his office, the president of the Texas Academy of Family Physicians shall be a member of the committee.

(b) The terms of office of each member, excluding the term of office of the president of the Texas Academy of Family Physicians, shall be for three years, except for the initial term, which

shall be designated in a manner approved by the board in such a way, insofar as is possible, that one-third of the members shall serve for one year, one-third for two years, and one-third for three years, and thereafter each member shall serve for a term of three years. Each member shall serve until his replacement has been appointed to the committee.

(c) The members of the committee shall not be compensated for their service, but shall be reimbursed by the board for actual expenses incurred in the performance of duties as members of the committee.

(d) The committee shall meet at least annually and so often as requested by the board or called into meeting by the chairman.

(e) The chairman shall be elected by the members of the committee for one year.

(f) The committee shall review for the board applications for approval and funding of family practice residency training programs and related support programs, make recommendations to the board relating to the standards and criteria for approval of residency training and related support programs, and perform such other duties as may be directed by the board.

SUBCHAPTER J. REPAYMENT OF CERTAIN STUDENT LOANS

Section 61.532. Eligibility

(a) To be eligible to receive repayment assistance, a physician must apply to the coordinating board and have

completed at least one year of medical practice:

(1) in private practice in an economically depressed or rural medically underserved area of the state; or

(2) for one of the following state agencies:

(A) Texas Department of Health;

(B) Texas Department of Mental Health and Mental Retardation;

(C) Texas Department of Corrections; or

(D) Texas Youth Commission.

(b) The coordinating board may by rule provide for repayment assistance on a pro rata basis for physicians practicing part-time for a state agency

specified in Subsection (a) of this section.

Section 61.533. Limitations

A physician may receive repayment assistance grants for each of not more than five years.

Section 61.534. Eligible Loans

(a) The coordinating board may provide repayment assistance for repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physician through a lender in Texas.

(b) The coordinating board may not provide repayment assistance for a student loan that is in default at the time of the physician's application.

Section 61.535. Repayment.

(a) The coordinating board shall deliver any repayment made under this subchapter in a lump sum directly to the lender.

(b) A repayment made under this subchapter may be applied only to the principal amount of the loan.

Section 61.536. Advisory Committees

The coordinating board may appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter.

Section 61.537. Rules

(a) The coordinating board shall adopt rules necessary for the administration of this subchapter,, including a rule that sets a maximum

amount of repayment assistance that may be received by a physician in one year.

(b) The coordinating board shall distribute to each medical unit and appropriate state agency and professional association copies of the rules adopted under this section and pertinent information in this subchapter.

Section 61.538. Application of Sunset Act

The repayment program provided by this subchapter is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the program is abolished and this subchapter expires September 1, 1997.

SUBCHAPTER K. REPAYMENT OF CERTAIN STUDENT LOANS (NEW)

Section 61.606. Definitions

In this subchapter:

(1) "Physical therapist" means a person licensed under Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes).

(2) "Residential care facility" means a facility operated by the Texas Department of Mental Health and Mental Retardation that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

Section 61.602. Repayment Authorized

The coordinating board may provide, using funds appropriated for that purpose and in accordance with this subchapter and rules of the board, assistance in repayment of student loans for physical

therapists who apply and qualify for the assistance.

Section 61.603. Eligibility

(a) To be eligible to receive repayment assistance, a physical therapist must apply to the coordinating board and have completed at least one year of practice as a physical therapist in a residential care facility.

(b) The coordinating board may by rule provide for repayment assistance on a pro rate basis for physical therapists practicing at least part-time in a residential care facility.

Section 61.605. Eligible Loans

(a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loan for

undergraduate education, received by a physical therapist through a lender in Texas.

(b) The coordinating board may not provide repayment assistance for a student loan that is in default at the time of the physical therapist's application.

Section 61.606. Repayment

(a) The coordinating board shall deliver any repayment made under this subchapter in a lump sum directly to the lender.

(b) A repayment made under this subchapter may be applied only to the principal amount of the loan.

Section 61.607. Advisory Committee

The coordinating board may appoint an advisory committee from outside the board's membership to assist the board in

performing its duties under this subchapter.

Section 61.608. Acceptance of Funds

The coordinating board may accept gifts, grants, and donations for the purposes of this subchapter.

Section 61.609. Rules

(a) The coordinating board shall adopt rules necessary for the administration of this subchapter, including a rule that sets a maximum amount of repayment assistance that may be received by a physical therapist in one year.

(b) The coordinating board shall distribute to each institution of higher education, the Texas Department of Mental Health and Mental Retardation, and appropriate professional associations copies of the rules adopted under this

section and pertinent information in this subchapter.

EXHIBIT M

TEXAS EDUCATION CODE.

Section 95. Administration of the Texas State University System

Section 95.01. Board of Regents

The organization, control, and management of the state university system is vested in the Board of Regents, Texas State University System.

Section 95.02. Board Members: Appointment, Qualifications, Terms

The board is composed of nine members appointed by the governor with the advice and consent of the senate. The members hold office for terms of six years, with the terms of three members expiring February 1 of odd-numbered years. Each member of the board shall be a qualified voter; and the members shall

be selected from different portions of the state.

Section 95.03. Board Meetings

The board shall provide for regular meetings for the transaction of business pertaining to the affairs of the state university system. The chairman or a majority of the members of the board by petition may at any time call a special meeting of the board and fix the time and place thereof.

Section 95.04. Per Diem; Expenses

Members of the board shall receive a per diem payment as provided by the legislature and shall in addition be reimbursed for the actual expenses incurred by them in the performance of their duties. Payment shall be made out of the appropriation for the support and

maintenance of the state university system as the board may direct.

Section 95.05. Quorum

Five members of the board shall be a quorum for the transaction of business at any meeting and, unless a greater number is required by the board's rules, the act of a majority of the members present at any meeting shall be the act of the board.

Section 95.21. General Responsibilities and Authority of Board

(a) The board is responsible for the general control and management of the universities in the system and may erect, equip, and repair buildings; purchase libraries, furniture, apparatus, fuel, and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers, and other em-

ployees; fix the salaries of the persons employed; and perform such others acts as in the judgment of the board contribute to the development of the universities in the system or the welfare of their students.

(b) The board has authority to promulgate and enforce such rules, regulations, and orders for the operation, control, and management of the university system and its institutions as the board may deem either necessary or desirable. When a power is vested in the board, the board may adopt a rule, regulation, or order delegating such power to any officer, employee, or committee as the board may designate.

Section 95.22. Inspection of Universities

The board as a whole or by committee shall visit each university under its control and management at least once during each scholastic year, inspect its work, and gather information which will enable the board to perform its duties intelligently and effectively.

Section 95.23. Local Committees of Board

At least once a year each local committee of the board shall meet on the campus of the institution for which the local committee is responsible for reporting to the board. At the meeting, the local committee shall confer with the institution's officials and carefully examine all phases of operations of the institution.

Section 95.24. Admission; Diplomas and Certificates

The board may determine the conditions on which students may be admitted to the universities, the grades of certificates issued, the conditions for the award of certificates and diplomas, and the authority by which certificates and diplomas are signed.

Section 95.25. Teaching Certificates

Diplomas and teachers certificates of each of the system universities authorize the holders to teach in the public schools.

Section 95.26. Incidental Fees.

The board may fix the rate of incidental fees to be paid by students attending the colleges and may make rules for the collection of the fees and for the disbursement of the funds collected.

Section 95.27. Annual Report to Governor

The board shall make an annual report to the governor showing the general condition of the affairs of each university in the system and making recommendations for its future management and welfare.

Section 95.28. Disbursement of Funds

All appropriations made by the legislature for the support and maintenance of the system universities, for the purchase of land or buildings for the universities, for the erection or repair of buildings, for the purchase of apparatus, libraries, or equipment of any kind, or for any other improvement of any kind shall be disbursed under the direction and authority of the board. The board may formulate rules for the general control and management of the

universities, for the auditing and approving of accounts, and for the issuance of vouchers and warrants which are necessary for the efficient administration of the universities.

Section 95.29. Financial Statements and Recommendations

The board shall file in each house of the legislature at each of its regular biennial sessions a statement of the receipts and expenditures of each of the system universities, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, and other items of expense. The board shall also file its recommendations for appropriation for the universities.

Section 95.30. Eminent Domain

The board has the power of eminent domain to acquire for the use of the system universities the lands necessary and proper for carrying out their purposes, in the manner prescribed in Title 4, Chapter 21, of the Property Code. The taking of the land is for the use of the state. The board shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners as provided in Section 21.021 of the Property Code.

Section 95.31. Acquisition of Land; Procedures

The board may acquire land, including the improvements thereupon, needed for the proper operation of a system university. The acquisition may be by grant, purchase, lease, exchange, gift, devise, or by condemnation.

If the board and the landowner cannot agree on the sale and purchase of the land, the board may request the attorney general to proceed to condemn the land as provided by law.

Section 95.32. Dormitories

(a) The board may enter into contracts with persons, firms, or corporations for the erection of dormitories at a university, and may purchase or lease lands and other appurtenances for the construction of the dormitories, provided that the state incurs no liability for the buildings or the sites.

(b) The board may make contracts with reference to the collection and disposition of the revenue derived from the dormitories in the acquisition,

management, and maintenance of the buildings.

(c) The board may adopt rules and regulations it deems reasonable requiring any class or classes of students to reside in the dormitories or other buildings. Absolute management and control of the dormitories constructed is vested in the board.

Section 95.33. Management of Property

The board of regents of the Texas State University System has the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, the Texas State University System. The board may sell, lease, and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board

deems best for the interest of the Texas State University System, not in conflict with the constitution. However, the land shall not be sold at a price less per acre than that which the same class of other public land may be sold under the statutes. No grazing lease shall be made for a period of more than 10 years.

Section 95.34. Donations, Gifts, Grants, and Endowments

(a) The board may accept donation, gifts, and endowments for the universities under its control to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, grant, or endowment, not inconsistent with the laws of the state or with the objectives and proper management

of the universities. All money accepted under the authority of this section shall be deposited to the credit of one or more special funds created by the board for the university system or universities in the system. The board shall designate one or more depositories for the money received and shall accord money deposited in them the same protection by the pledging of assets of a depository as is required for the protection of public funds.

(b) The board may deposit in one or more appropriate accounts created by the board all funds received as administrative fees or charges for services rendered in the management and administration of any trust estate under the control of the board. The funds so received as administrative fees or

charges may be expended by the board for any educational purpose of the university system or universities in the system.

Section 95.36. Management and Lease of Land

(a) The board may lease for oil, gas, sulphur, ore, and other mineral development all land under its control. The board may make and enter into pooling agreements, division orders, or other contracts necessary in the management and development of its land. All leases, pooling agreement, division orders, or other contracts entered into shall be on terms which the board deems in the best interest of the system and the system universities. No lease shall be sold for less than the royalty and rental terms demanded at that time by the General Land Office in the sale of oil, gas, and other

mineral leases of the public lands of the State of Texas.

(b) Except as provided in Subsection (c) of this section, any money received by virtue of this section and the income from the investment of such money shall be deposited in the State Treasury to the credit of a special fund to be known as the Texas State University System special mineral fund, to be used exclusively for the university system and the universities in the system. However, no money shall ever be expended from this fund except as authorized by the General Appropriations Act.

(c) All money received by virtue of the lease of land given to the board by a will, instrument in writing, or other means shall be deposited to the credit of one or more special funds created by the

board for the university system or universities in the system. The board shall designate one or more depositories for the money received and shall accord money deposited in them the same protection by the pledging of assets of a depository as is required for the protection of public funds. Money deposited in a special fund may be used by the board for payment of principal and interest on revenue bonds or notes issued by the board and for any other use or purpose which in the judgment of the board may be for the good of the university system or the universities in the system.

Section 95.37. Delinquent Student Loan Accounts; Venue

A suit by the Texas State University System on its own behalf or on behalf of

a component institution of the Texas State University System to recover a delinquent student loan, account, or debt owed to the Texas State University System or a component institution of the Texas State University System shall be brought in Travis County.

EXHIBIT N

TEXAS EDUCATION CODE.

Section 103. Midwestern State University

Section 103.01. Midwestern State University

Midwestern State University is a coeducational institution of higher learning located in the city of Wichita Falls.

Section 103.02. Board of Regents

The organization, control, and management of the university is vested in a board of nine regents.

Section 103.03. Board Members: Appointment, Terms, Oath

Members of the board shall be appointed by the governor and confirmed by the senate. Members hold office for staggered terms of six years. Any vacancy that occurs on the board shall be

filled for the expired term by appointment of the governor. Each member of the board shall take the constitutional oath of office.

Section 103.04. Reimbursement of Board Members

The board shall receive reimbursement only for the actual cost of attendance at board meetings.

Section 103.05. Board Officers

The board shall organize by electing a chairman and other officers they desire.

Section 103.06. President of University: Selection; Duties

The board shall select a president for the university and shall fix his term of office, name his salary, and define his duties. The president shall be the executive officers for the board and

shall work under its directions. He shall recommend a plan of organization and the appointment of employees of the university. He shall have the cooperation of the board and shall be responsible to the board for the general management and success of the university.

Section 103.07. General Responsibilities

The board shall build and operate a state college of the first rank that will compare favorably with the other splendid colleges in Texas in the preparation of youth for the varied interests and industries in the section in which the university is located, and this college shall be equipped adequately to do its work as well as other state colleges.

Section 103.08. Donations, Gifts, and Endowments

The board may accept donations, gifts, and endowments for the university to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, or endowment, not inconsistent with the objects and proper management of the university.

Section 103.09. Lease of Lands

The board may lease the surface rights of land under is control and management for any term of years less than 100.

Section 103.10. Joint Programs

(a) Both civilian and military student personnel shall be eligible to enroll in joint programs. All joint program students shall register at the

university and shall receive appropriate credit from the university.

(b) Students enrolled at the university in joint programs shall pay the regular tuition fees as provided by law. The university shall collect an initial administrative fee in the amount of $25 from military student personnel who receive all their instruction at the air force base solely by air force personnel in lieu of such regular tuition fees. No state appropriations shall be made for instructional costs for semester credit hours taught at the air force base by air force personnel. Civilian students shall be subject to the general tuition provisions set forth in this code for all credit hours taught.

(c)(1) No training may be given to students in any of the following areas:

(A) the prescribing of ophthalmic lenses for the human eye or the prescribing of contact lenses for the human eye, or the fitting or adaptation of contact lenses to the human eye;

(B) the prescribing, whether written or oral, of the use of any optical device in connection with ocular exercises, visual training, vision training, or orthoptics; or;

(C) optometric technology or ophthalmological technology other than those courses of training being offered to military trainees at Sheppard Air Force Base on May 17, 1973; provided, however, training in the use of screening devices or orthoptic training devices may be given to the students.

(2) It is the intent of the above restrictions that training may not

be given to students on subjects of visual care involving the exercise of professional judgment required of licensed physicians or optometrists.

(d) Military students who receive all of their instruction on the military base shall be exempt from all student service fees and building use fees.

EXHIBIT O

TEX.REV.CIV.STAT.ANN.

ART. 4411 No admission to prejudice.

No admission, agreement or waiver, made by the Attorney General, in any action or suit in which the State is a party, shall prejudice the rights of the State.

EXHIBIT P

TEX.REV.CIV.STAT.ANN.

ART. 6252-9b, sec. 2(8)

"State agency" means:

(A) any department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.